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91-1741

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.,

Petitioners,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, HELEN M. BOLEN,

Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a statutory scheme of "weighted voting," adopted as part of a transit special assessment, violate the Fourteenth Amendment's Equal Protection Clause where owners of comparable properties which are subject to the special assessment hold widely disparate voting power in a referendum on that levy? Specifically, does a referendum that allots votes using assessed property value under California's acquisition-value approach (Proposition 13) violate equal protection if the special levy is based on parcel square footage?

2. Does the statutory voting scheme, which denies the right to vote to equally interested and affected persons, require a compelling state interest for the distinctions drawn?

LIST OF PARTIES AND RULE 29.1 LIST

A. PARTIES BEFORE THE COURT:

The following parties before the Court were parties below:

Petitioners: (Interveners below)

The Atchison, Topeka and Santa Fe Railway Company
National Railroad Passenger Corporation (AMTRAK)
Keller Street Development Company
S & P Company
Plaza Development Associates
Sam Rubinfeld
Charles Terry
John J. Wong
Joe and Leona Fallas
510 Com Partnership
Winard Realty Co.
Eleanor Devin Johnson
Philip Ordin Properties
Fifth-Broadway Partnership
Rowan Development
Henry Mar
Sierra Int. Investment
Jerry & Oren Harlene
Sally S. Ripley
Bunker Hill East
Nelson and Mary Moy
Peter Lew, Jr.
Robert Templeton
Yim Young Kam
John Carner

Respondents: Southern California Rapid Transit District (Respondent below)
Helen M. Bolen (Appellant below)

LIST OF PARTIES – Continued

B. CORPORATE AFFILIATIONS:

The Atchison, Topeka & Santa Fe Railway Co. ("ATSF") is wholly owned by SFP Properties, Inc. (successor by merger to Santa Fe Industries, Inc.) which is wholly owned by Santa Fe Pacific Corporation. The non-wholly owned subsidiaries of ATSF are as follows: Alameda Belt Line, The Belt Railway Co. of Chicago, Central California Traction Co., The Denver Union Terminal Railway Co., Houston Belt and Terminal Railway Co., Kansas City Terminal Railway Co., The Oakland Terminal Railway Co., Oklahoma City Junction Railway Co., St. Joseph Terminal Railway Co., Sunset Railway Co., Texas City Terminal Railway Co., The Wichita Union Terminal Railway Co., Trailer Train Co.

Plaza Development Associates is now Hope and Flower B.P. Partnership.

The parent of Keller Street Development Co. is S&P Company. The non-wholly owned subsidiaries of Keller Street are General Brewing Co., Pearl Brewing Co., and Falstaff Brewing Co.

The non-wholly owned subsidiaries of S&P Company are Keller Street Development Co. and Falstaff Brewing Co.

National Railroad Passenger Corporation (AMTRAK) has no parent or non-wholly owned subsidiaries.

LIST OF PARTIES – Continued

C. PARTIES BELOW NOT BEFORE THE COURT:

The following parties which were Interveners below do not petition this Court:

Union Pacific Railroad
Union Pacific Land Resources Corporation
Los Angeles and Salt Lake Railroad Company
Meruelo Properties, Inc.
Los Angeles Car Wash Corp.
L & R Investment Co.
Knell Investment Co., Inc.
Coast Fixtures & Liquidators Cor.
Zuma Corp.
Morse M. Preeman, Inc.
Altshule Sales Co.
Workmans Auto Insurance Co.
Heet Sound Products
Santa Fe Land Improvement Company
Phillippe the Original
Bruce Manley
Southern Pacific Transportation Company

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Petition For Writ Of Certiorari To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners, The Atchison, Topeka and Santa Fe Railway Company, et al., pray that a Writ of Certiorari issue to review the opinion and judgment of the California Supreme Court.

OPINIONS BELOW

The March 26, 1992 denial of Petitioners' Petition for Rehearing appears in the Appendix at 1. The opinion of the California Supreme Court, reported at 1 Cal.4th 654, appears in the Appendix at 2. The opinion of the California Court of Appeal, Second Appellate District, reported at 219 Cal.App.3d 1446, is reproduced in the Appendix at 53. The Statement of Decision and Judgment of the Los Angeles County Superior Court appear in the Appendix at 85 and 97.

JURISDICTION

The Judgment of the California Supreme Court was filed January 30, 1992, reversing the California Court of Appeal, Second Appellate District decision dated May 1, 1990. That decision reversed the judgment of the Los Angeles Superior Court dated January 4, 1988. The California Supreme Court denied a timely Petition for Rehearing, March 26, 1992.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. Petitioners have served the Attorney General of California; 28 U.S.C. § 2403(b) may be applicable.

STATUTORY PROVISIONS INVOLVED

The following statutes are set forth in pertinent part in the Appendix at 102-113:

Fourteenth Amendment, United States Constitution,
Article One, Section Seven, California Constitution,
California Public Utilities Code §§ 33000 - 33002.8

STATEMENT OF THE CASE

A. QUESTIONS PRESENTED

There is, in the City of Los Angeles, an undeniable need for a public transportation system. A portion of the billions of dollars needed to finance such a system is coming from owners of property in the area surrounding new Metro Rail stations. The Southern California Rapid Transit District ("RTD") will exact approximately $200,000,000 in assessments over a twenty-year period to "recapture" the "benefit" of being near a station.[1] However, the enabling legislation establishing the financing structure for assessing the owners, in particular, the structure of the referendum on a benefit assessment district, was so poorly conceived that it cannot pass constitutional muster. The infirmities have resulted in a district formation which is fundamentally unfair and, if left uncorrected, will be repeatedly imposed as the transit line is extended to its ultimate length. The ten California appellate judges who have now reviewed the statutory scheme have divided, 5-5, on its constitutionality.

Unfortunately, the frustrations of facing daily gridlock have prevailed at the expense of Petitioners' voting

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[1] References throughout this Petition are to page numbers in the state court Joint Appendix [JA], the RTD's record of administrative proceedings [AR], or the Appendix attached hereto [App. at ___].

rights. Taking undue license with this Court's opinions, the California high court majority which upheld the law was thematically unequivocal: "[t]he Constitution does not stand as a 'roadblock[] in the path of innovation, experiment and development among units of local government.' (See *Avery v. Midland County* (1968) 390 U.S. 474, 485 [20 L.Ed.2d 45, 53-54, 88 S.Ct. 1114])." [App. at 11-12.] The court later continued:

> "Early in our history, the high court observed that 'the science of government is . . . the science of experiment.' (*Anderson v. Dunn* (1821) 19 U.S. [6 Wheat.] 204, 226 [5 L.Ed. 242, 247].). . . . ' [V]iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions.' (*Sailors v. Board of Education* (1967) 387 U.S. 105, 110-111 [18 L.Ed.2d 650, 654-655, 87 S.Ct. 1549].) In the circumstances of this case, combining an old device with a new setting, we see 'nothing in the Constitution to prevent experimentation.' *Id.* at p. 111 [18 L.Ed.2d at p. 655].)" [App. at 40.]

The history of this Court's constitutional jurisprudence, however, has not been one of complete and utter deference, especially where, as here, state and local governments are "experimenting" with the constitutional rights, especially the voting rights, of owners of private property.

In addressing the sufficiency of the statute, the California courts paid great attention to the often perplexing question of the threshold selection of the appropriate level of judicial scrutiny. Yet, even if the lower level of

scrutiny applies, the California Supreme Court's decision to uphold the vote allocation formula is in such conflict with the fundamental principles of equal protection and fairness which have guided this Court's voting cases, that it commands this Court's attention. The specific questions presented are therefore:

1. Does a statutory scheme of "weighted voting," adopted as part of a transit special assessment, violate the Fourteenth Amendment's Equal Protection Clause where owners of comparable properties which are subject to the special assessment hold widely disparate voting power in a referendum on that levy? Specifically, does a referendum that allots votes using assessed property value under California's acquisition-value approach (Proposition 13) violate equal protection if the special levy is based on parcel square footage?

2. Does the statutory voting scheme, which denies the right to vote to equally interested and affected persons, require a compelling state interest for the distinctions drawn?

B. ISSUES PRESENTED TO THE STATE COURT

This action was filed as a "friendly" bond validation suit by the RTD against its own Secretary, Helen M. Bolen, in the hopes of obtaining a favorable appellate decision ensuring the security of the bonds against further legal challenge. Because of the inherent potential for conflict of interest and in order to assure a full and fair hearing of all challenges to the formation of the district, Petitioners herein, a representative cross-section of large

and small downtown Los Angeles property owners and one tenant, AMTRAK, intervened.

The issues raised herein were first presented to the trial court. [App. at 92-93.] Of specific concern was the voting scheme contained in the enabling legislation, Public Utilities Code §§ 33000, *et seq*. This scheme, devised by RTD and adopted by the Legislature, was the only opportunity for assessees to protest the formation of the district.

Since the Legislature provided an election as part of the establishment of this district, the Constitution compels that the election be open, fair and meaningful. *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 665, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966). This election, however, draws impermissible distinctions which do not reasonably relate to the statutory purpose in violation of the Equal Protection Clauses of the United States and California Constitutions. [Amendment 14, U.S. Const., Article I, § 7, Cal. Const.] Specifically, it "weights" voting strength based on economic status (one vote per $1,000 of assessed value) even though the assessment is levied based upon parcel and floor area. There is no relationship between relative voting strength and the amounts paid in special assessments.[2]

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[2] The terminology tends to become confusing when using "assessed value" for property (ad valorem) tax purposes and "special assessment" or "assessment district." The two concepts are functionally distinct. "Assessed value" refers to the appraised value of the property upon which property taxes are paid. A "special assessment" is a special charge applied to a

(Continued on following page)

The scheme was imbalanced even more by the impact of California's Proposition 13. Cal. Const., Article XIIIA. After the passage of Proposition 13, properties were reassessed only upon transfer. Recently transferred and reassessed properties were accorded more votes than equally or more valuable properties that had not been reassessed. This resulted in a nonsensical skewing of the voting scheme where votes were awarded based not on how much in benefit assessments one paid but on the utterly random and irrelevant fact of a more recent property transfer (those recently purchased or constructed resulting in a reassessment to a higher value and more votes). The law does not permit such random and unjustified dilution of voting strength.

As a constitutional concept, weighted voting power is not an issue unique to this case. Dilution of voting strength has been found constitutionally permissible in special purpose elections so long as the method of vote allocation rationally relates to a legitimate governmental objective. *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 93 S.Ct 1224, 35 L.Ed.2d 659 (1973); *Ball v. James*, 451 U.S. 355, 101 S.Ct. 1811, 68 L.Ed.2d 150 (1981). Typically, the rationale has been based on proportionality, i.e., those who are most affected should be entitled to the most say. Although the California Supreme Court points out that the Constitution does not *require* a perfect fit between the burdens of the assessments and the benefit of the vote, the Constitution and the decisions

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(Continued from previous page)

property, for some form of public improvement (e.g., streets, sidewalks, etc.) which has no relation to property taxes except that the two are usually collected simultaneously. [App. at 5.]

of this Court, at the very least, require some rational "fit"; under the present scheme there is none.

C. FACTS MATERIAL TO QUESTIONS PRESENTED

1. The Statute

In 1983, the California Legislature enacted Public Utilities Code §§ 33000, *et seq.*, which authorized RTD to establish a special benefit assessment district to finance construction, operation and maintenance of rail transit operations.[3] The Legislature also authorized RTD to issue bonds funded by the assessment of property within the district.

The legislation provides that if the RTD Board finds that property will receive a special benefit by reason of its location near a rail transit station, it can pass a resolution providing for notice and hearing of its intention to establish such a district and levy assessments. [§ 33001(a).] The Board may thereafter determine to proceed with the establishment of the district. [§ 33001.5.]

The RTD then submits the resolution to the City of Los Angeles. The City Council "shall, after a public hearing . . . approve, or amend and approve, as amended, or disapprove the geographic boundaries of the district and the method of assessment." [§ 33001.5(b).] The City returns the resolution to the RTD Board which decides

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[3] Unless otherwise noted, statutory citations are to the California Public Utilities Code. The relevant statutory provisions are set forth in full at App. 103-113.

whether to create the district as approved by the City Council. [§ 33001.5(c).]

(The Election Scheme)

The sole means to protest the formation of the district is by a special, one-time election. The property owners are entitled to an election only if they file a petition, signed by the owners of at least 25% of the assessed value of real property within the benefit district, within 30 days after the conclusion of the public hearing. [§§ 33002.2, 33002.5.] The only voters in that election are the owners of real property within the district that is to be assessed. [§ 33002.3.]

The election scheme classifies voters on the basis of (1) property ownership, a prerequisite to vote, and (2) economic status. Higher assessed properties are allocated more votes. Section 33002.3(a) defines "voter" as "an owner of real property which is assessed or proposed to be assessed under this Chapter and which is within the boundaries of the benefit district." The statute expressly disenfranchises all non-property owners inside and outside the district including all tenants of assessed property.

Section 33002.3(b) allocates voting strength based upon the *value* of the property so that "each voter . . . may cast one vote for each one thousand dollars ($1,000) or fraction thereof, worth of land or improvements owned by the voter . . . as shown on the most recent equalized assessment roll." Conversely, the burden of the assessment, what each owner must pay each year,

is based upon the greater of parcel area or improvement floor area. [§ 33002.]

(How the Scheme Discriminates)

In a properly formulated assessment election, those with the most votes also pay the highest assessments. Here, there is *no relationship whatsoever* between votes awarded and assessment paid; votes are calculated based on assessed value, but the assessment is based on parcel or floor area. The property at 612 Flower Street in Los Angeles has 455,148 square feet which at $.30 per square foot equals an assessment of $136,544.40 per year. That property is assessed at $59,797,959, resulting in 59,798 votes. [JA 1057.] However, the Biltmore Hotel pays assessment on 1,047,835 square feet or $314,350.50 per year, but has only 33,416.1 votes. The contrasts get more extreme. The property at 601 S. Broadway will pay $406,527 per year and has only 1,656.6 votes. [JA 1059.] This is three times the assessment of 612 Flower, but with 3% of the votes!

Likewise, a number of buildings have similar square footage (and thus pay similar assessments), but have widely divergent numbers of votes.

Property	Area (sq. ft.)	Votes
631 S. Hill	89,300	8,787.6
403 W. 8th	90,500	4,085.1
220 W. 5th	91,768	2,246.0
632 S. Hill	92,648	1,066.8
620 S. Maine	89,010	410.4

[JA 1057-1065.]

Since there is no correlation between market value and assessed value due to the effects of Proposition 13, the value at the time of acquisition or construction is the governing factor. Cal. Const. Art. XIIIA.

Turning to the question of who is most affected by the assessment, the disenfranchisement of all non-property owners most severely impacts tenants, given the standard "pass through" clauses in commercial leases that require the tenant to pay all taxes and assessments. This is especially true in the large buildings (i.e., large square footage) whose owners control the majority of the votes in the district.

An RTD report addresses "specific issues that may be pivotal in the establishment of benefit assessment districts for MOS-1:"

> "Moreover, the vast majority of buildings in the CBD benefit assessment district have pass through provisions in the tenant lease agreements." [AR 2387.]

One report prepared by the RTD's consultants notes that newer buildings utilize a pass-through formula while many older buildings do not. [AR 868.] That same consultant, when studying the assessment districts in Washington, D.C. and Atlanta, which RTD used as a model, wrote: "beyond the issue of rate of assessment, the ability to directly pass on the assessment to the tenant was absolutely essential." [AR 1206.] Disenfranchisement of tenants eliminated the voice of those with the most to lose.

2. Cleanup Legislation.[4]

In 1984, the RTD sponsored Senate Bill 1463, as a legislative amendment to §§ 33000, *et seq*. Among other things, this bill would have allocated voting power based upon parcel or floor area, thus making the allocation of votes consistent with the method of assessment and eliminating assessed value as the measure of voting power. [AR 652a, 654.] Although passed by the Legislature, Senate Bill 1463 was vetoed by the Governor for unrelated reasons.[5]

3. Passage of the Resolution

On February 14, 1985, the RTD Board passed a Resolution to Proceed with Establishment of Special Benefit Assessment Districts for MOS-I. [AR 1831.] This resolution exempted residential uses and imposed an initial assessment rate ranging from $.30 per square foot per year of the greater of land or improvements, with the maximum rate being $.42. [*Id.*] The Board then submitted the resolution to the City Council, which approved the geographic boundaries and returned the resolution to the RTD Board for final approval. [AR 1875.] On July 11,

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[4] "Cleanup" was RTD's own terminology. [AR 938.]

[5] In addition to the change in the vote allocation formula, the RTD and Legislature attempted to exempt residential property from the assessment. [AR 652a, 663a.] The Governor vetoed it on the specific ground that his Legislative Counsel opined that the exemption of residential property was unconstitutional. [AR 2320.] Despite this fact, RTD exempted residential property when the district was adopted.

1985, the Board passed a resolution creating Special Benefit Assessment Districts A1 (the Central Business District) and A2 (Wilshire/Alvarado). [AR 1709.]

After levying the assessment in 1986[6] and following a public hearing in May 1987, the Board adopted two resolutions authorizing the sale of revenue bonds in an amount up to $200 million. Bolen, in her capacity as Secretary of the SCRTD, refused to certify the vote on these resolutions, contending that the assessment scheme did not meet constitutional standards, that there was no special benefit to the properties within the districts, and that the RTD had failed to comply with various statutory requirements.

4. Legal Proceedings.

On August 4, 1987, RTD filed this action against its Secretary for the purpose of validating the assessment district and the bonds. Petitioners were granted leave to intervene. The case was tried to the court, and on January 4, 1988 it filed a written Statement of Decision and entered Judgment which upheld the statutory scheme. [App. at 85-101.]

Respondent Bolen and Petitioners appealed. On May 1, 1990, the Court of Appeal filed its decision reversing the trial court on these issues. [App. at 53-84.] RTD then sought review in the Supreme Court of California which was granted by order dated August 16, 1990. On January

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[6] RTD levied the assessment in 1986 but later abated the assessments from 1987 through 1992 while Metro Rail construction is in progress. [App at 8.]

30, 1992, the California high court issued its opinion reversing the California Court of Appeal. [App. at 2-52.]

REASONS FOR GRANTING THE WRIT

1. California No Longer Recognizes Equal Protection Limitations on Weighted Voting in Special Assessment Referenda.

The national press widely reported that this term's oral argument in *Nordlinger v. Hahn*, No. 90-1912, included a suggestion by Justice Scalia that the California property tax system "was close enough for government work."[7] In its opinion in this case, the California Supreme Court takes this *lassez faire* approbation and runs with it to an absurd, even dangerous extent.

Petitioners advanced below the seemingly unremarkable proposition that equal protection requires that those who pay the most in assessments be allotted the most votes in a referenda. Absent at least a rough proportionality to link voting power and financial burden, the statutory voting scheme lacks a rational basis. To this end, Petitioners cited this Court's justification upholding the limited franchise and weighted voting scheme in *Ball v. James*, 451 U.S. 355, 101 S.Ct. 1811, 68 L.Ed.2d 150 (1981):

> "Arizona could rationally make the weight of their vote dependent upon the number of acres they own, since that number reasonably reflects the relative risks they incurred as landowners and the distribution of the benefits and burdens

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[7] *L.A. Daily Journal*, February 26, 1992, p. 5.

of the District's water operations." 451 U.S. at 371.

Unimpressed by this authority, the California Supreme Court held that while proportionality justified the district in *Ball*, such a relationship is not *required* by the Equal Protection Clause. Dismissing the language in *Ball*, the court below opined: "We cannot regard these brief remarks as definitive on the issue, however, impliedly condemning alternative vote allotment schemes."[8] [App. at 33.]

As this Court is well aware after *Nordlinger*, assessed value for property tax purposes in California bears no

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[8] The California Court claims that the weighted voting in this case is very similar to that employed in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 93 S.Ct. 1224, 35 L.Ed.2d 659 (1973). [App. at 34.] The method of assessment was neither at issue in that case nor disclosed by the facts. In *Salyer* the votes were apportioned based on appraised value of land while the exact amount of the assessments **was to be determined in the future by the district** "in accordance with the benefits accruing to each tract of land." 410 U.S. at 724. How the assessment was to be imposed in *Salyer* was not yet decided. The language actually used in *Salyer* ("in accordance with the benefits that will accrue to each tract of land") is the language of proportionality. The court jumps from the premise that because this court upheld *Salyer's* district, which included a method of vote allocation which was not clearly disproportional, this Court should uphold RTD's method which *is* clearly disproportional. *Salyer* was also decided prior to the adoption of Proposition 13, at a time when similarly situated parcels bore roughly proportional assessed values.

relation whatsoever to current or actual value. It also bears no relation to square footage. Proposition 13 therefore has a "wild card" effect on the vote allotment scheme, according more votes to recently transferred properties and less votes to properties long held, based upon an acquisition-date formula, utterly without regard to the square footage of the respective properties. Such a scheme undeniably results in gross disparities in voting power and assessment burden of properties of comparable square footage. As noted, the voting power of comparably sized parcels within the district may vary by as much as (in one case) a factor of 20, depending on the date of acquisition.[9] [App. at 34, n.8.]

That said, however, the California Supreme Court still found no constitutional infirmity; even though the votes allocated to properties paying comparable assessments can vary by as much as 2,000%, the Court found no denial of equal protection. And what were the reasons? The opinion does not disclose much beyond its thematic underpinning that the Court should not interfere with the Legislature's "experimentation."

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[9] Warehouse space, for example, is heavily assessed due to its large square footage, but it will receive little or no benefit from increased commercial traffic. Its voting power should not be diluted in favor of less space-intensive buildings that have high assessed values merely because they were recently transferred. Similiarly, the double digit appreciation experienced by commercial properties in downtown Los Angeles during the 1980s, means that a small commerciai building acquired in 1990 will have a much higher assessed value than a much larger commercial structure that continues to have its assessed value tied to the 1975 Proposition 13 base year value.

Searching for some justification, the California Court makes the astonishing statement:

> "[W]e think that the Legislature was entitled to assume that within these relatively small benefit assessment districts, assessed valuation bears a rough relationship to lot or building size and that the vote allotment and assessment formulas are thus not unreasonably disproportionate for equal protection purposes." [App. at 34.]

There is no "rough relationship" here; in fact, there is no relationship at all. Assessed value is an entirely random measure when compared to square footage. The Court concedes as much in its further discussion. The mere fact that the Court makes this statement, after deriding Petitioners' linkage argument, is, however, a telling concession.[10]

The Court also concludes without explanation that its rationale upholding "substantial inequalities in the assessed value for property tax purposes against equal protection challenge," (citing *Amador Valley Joint Union High School District v. State Bd. of Equalization*, (1978) 22 Cal.3d 208, 233-236 [149 Cal.Rptr. 239, 583 P.2d 1281] which upheld the constitutionality of California's "welcome stranger" doctrine), *should apply with equal force to substantial inequalities in voting rights.* [App. at 35, n.8.] While this Court has allowed the states wide latitude in

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[10] Nor is this a "relatively small benefit assessment district." Two hundred million dollars are at stake, an amount ten times greater than the largest benefit assessment district RTD's task force studied in planning this district. [AR 669-670.]

making choices in the tax area,[11] the same cannot be said of this Court's decisions on voting rights – even in those cases which have permitted deviation from the principle of one-person, one-vote.[12] Moreover, while allotting votes based on assessed value might be valid for an election to approve an increase in property taxes, it is not a relevant measure where the levy is based upon square footage.[13]

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[11] *See e.g., San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 41, 93 S.Ct. 1278, 36 L.Ed.2d 16, 47 (1973).

[12] Compare: *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969); *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 90 S.Ct. 1990, 26 L.Ed.2d 523 (1970); *Quinn v. Millsap*, 491 U.S. 95, 109 S.Ct. 2324, 105 L.Ed.2d 74 (1989), with *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 93 S.Ct. 1224, 35 L.Ed.2d 659 (1973); *Associated Enterprises, Inc. v. Toltec Watershed Improv. Dist.*, 410 U.S. 743, 93 S.Ct. 1237, 35 L.Ed.2d 675 (1973); *Ball v. James*, 451 U.S. 355, 101 S.Ct. 1811, 68 L.Ed.2d 150 (1981).

[13] The issue here is not whether similarly situated properties may be taxed differently as in *Amador*. *Amador* held that it is not a violation of equal protection for similarly situated properties to be assessed *for property tax purposes* based on acquisition value rather than current value, despite the fact that this will inevitably result in substantial tax disparities between properties recently transferred and those in long-standing, continuous ownership. *Amador*, 22 Cal.3d at 232-237. This issue is currently before the Court in *Nordlinger*. *See also, Allegheny Pittsburgh Coal Co. v. Webster County*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989). *If* the Legislature had created this benefit assessment district so that both the amount one pays and the amount of votes one receives were based on assessed value, the *Amador* issue would be implicated. The Court would *then* be presented with the questions of whether the *Amador* rationale for tax cases is equally applicable to

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The Court below could only respond in the most conclusory way:

> "The fact that such a constitutionally valid tax assessment system may have the marginal result of diluting voting power in an assessment referendum is an inequality that the Legislature can remedy by amending the voting scheme; it does not constitutionally invalidate the voting classification per se." [App. at 35, n.8.]

In light of the utter lack of any basis to support the distinctions drawn, Petitioners must ask, "why not?" – a proposition this Court will hopefully take up.

Finally, the Court takes pains to justify the basing of assessment levy calculations on square footage or parcel size because of the "rough but reasonably direct relationship resulting from the economic benefits resulting from the location of Metro Rail facilities. . . . " [App. at 36.] This is a proposition Petitioners do not disagree with, but which has no bearing on the use of assessed value to "weight" the vote. "Likewise," the Court continues (although there appears to be no connection), "the Legislature's direction that current ad valorem tax assessment roles be used to identify qualified voters and allot votes has the merit of accuracy, simplicity and administrative

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benefit assessments and how that rationale interfaces with this Courts' rules for weighted voting. Here, however, the Legislature has already chosen a method of assessment, square footage, that treats similarly situated properties the same. The issue, therefore, is whether it makes *any* sense, practically or legally, for the Legislature to use a vote allocation formula that bears no relation to that method of assessment.

convenience" which are "virtues that are not lightly abandoned." [App. at 36.]

"Administrative convenience," however, cannot alone supply a constitutionally sufficient rational basis. It cannot help explain why the distinction between square footage and assessed value furthers a legitimate governmental interest. It does not demonstrate why one building should be accorded more votes than another. A justification which has some plausible rational basis still requires some nexus between the burden of the assessment and the method of vote allocation, otherwise any measure could be validated under an "administrative convenience" rationale.[14] Why not base the votes on convenient notions like the height of the building? Or its color? Neither of these absurd suggestions has any less relation to square footage than California's acquisition-based assessed value. Restrictions on the franchise that violate equal protection cannot be justified "on exigencies of history or convenience." *New York City Bd. of Estimate v. Morris*, 489 U.S. 688, 703, n.10, 109 S.Ct. 1433, 103 L.Ed.2d 717, 733 (1989).

Moreover, although the California Supreme Court dismisses the "cleanup legislation" as a "post hoc event"

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[14] *Reed v. Reed*, 404 U.S. 71, 76-77, 92 S.Ct. 251, 30 L.Ed.2d 225, 229-230 (1971) (statute granting males preference in administrating estates held invalid despite the potential reduction in probate workload), and *Carrington v. Rash*, 380 U.S. 89, 96, 85 S.Ct. 775, 13 L.Ed.2d 675, 680 (1965) (statute denying servicemen the right to vote held invalid even though determining their eligibility was difficult.)

of "little force," [App. at 36, n.9], the fact that the Legislature tried to amend the statutory scheme to mandate vote allotment and assessments on a square footage or parcel basis demonstrates that it, at least, did not believe a consistent or proportional scheme to be administratively unworkable or even "inconvenient." RTD, for its part, acknowledged that it could and, in fact, *wanted* to use square footage as the measurement to allocate the votes by its sponsorship and support of the clean-up legislation.[15]

The California court's brush-off ("the issue before us is one of constitutional limitations on the scope of legislative classifications, not 'fairness' *simpliciter*" [App. at 36, n.9]) fails to recognize that the concepts of equal protection and fairness are not unrelated. That court's willingness to adopt the government's position, especially on a voting rights issue, with an "it may not be fair but its not unconstitutional" whitewash, eliminates *any* meaningful equal protection limitations under a rational basis analysis. The statutory scheme overreached in its "experimentation" and "innovation," and not even a rationality test will support it.

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[15] The California Supreme Court's further argument that information on assessed value was readily available, while square footage of buildings in the proposed district was not [App. at 37], is belied by the fact that RTD was collecting (and had to collect) the square footage data in order to calculate the assessments. Now, of course, if the Legislature is required to correct this defect, the square footage information is readily available since in 1986 assessments were already levied.

2. In its Zeal to Permit "Experimentation," the California Court is Sending the Wrong Signals to State and Local Government.

The California Supreme Court's focus on experimentation and innovation is sending a clear message: bring us a statute with the proper ends, and we will justify the means. Not only is this assessment district (presently at $.30 to $.42 per square foot per year) extremely burdensome for Petitioners and others who must pay it, the court obviously intends the effects of its decision to reach well beyond the confines of this case.

One of the results of Proposition 13's limitations on new property taxes in California has been the proliferation of assessment districts which are not subject to the mandatory two-thirds majority voting requirement which Proposition 13 imposes on new taxes. [*See e.g., Solvang Municipal Improvement Dist. v. Board of Supervisors,* 112 Cal.App.3d 545, 550-557 (1980).] Although not constitutionally mandated, such districts typically provide for some form of landowner referendum on the establishment of the assessment district. [See Note, *Rapid Transit Financing: Use of the Special Assessment* (1977) 29 Stan.L. Rev. 795.] Allowing the decision to stand in this case not only accords state and local government *carte blanche* in the structuring of these sham, meaningless elections to the detriment of private property owners and other burdened voting groups, it diminishes the impact of the decisions of this Court which have carefully kept the principles of fairness, inclusion and equality in voting rights paramount and kept exceptions to full enfranchisement tightly constrained.

Because by definition the rational basis test allows for wide latitude, it is no doubt somewhat rare for this Court to review "close-calls" in the state and local legislative process. This voting rights decision, however, from one of the most influential state courts in the nation, is so far reaching, so at odds with basic equal protection principles, and sends such an inherently wrong message that it should not continue as an example for "innovators" and "experimenters" to follow.

3. This Statutory Scheme Wrongfully Denies the Right to Vote to Equally Interested and Affected Persons In Violation of the Fourteenth Amendment[16]

The underpinnings for this Court's landmark decision in *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964), were those broader principles of voting equality embodied in the Fourteenth Amendment distinct and apart from the one person, one vote requirement and issues of population based representation. That decision was solidly founded on, *inter alia*, the traditional view that the concept of equal protection requires the uniform treatment of persons standing in the same relation to a questioned or challenged governmental action.

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[16] Because of the attention given to the appropriate *level* of constitutional scrutiny, both by the majority and dissent in the California Supreme Court, Petitioners present the issue for this Court's consideration, although the application of the compelling state interest standard is unnecessary in light of the utter failure of the statutory scheme to satisfy the rational basis test.

Id. at 565. This fundamental protection is never more crucial than when, as here, voter classifications exclude persons as equally interested and affected as those who are included. *Cipriano v. Houma*, 395 U.S. 701, 706, 89 S.Ct. 1897, 23 L.Ed. 2d 647 (1969).

Benefit assessments to finance Metro Rail are to be levied directly on commercial property owners in downtown Los Angeles with the certainty that tenants will ultimately bear much of that burden due to pass-through clauses in their leases. Yet these same tenants, many of whom agreed to such pass-through clauses long before Metro Rail was even contemplated, have been denied the right to vote on whether the very assessments they will pay should be levied in their current form or at all. This decision process from which the tenants were excluded will have substantial financial impacts on them for the next 20 years, contractually bound as they are to bear that burden.

Under circumstances such as these, the statutory voting scheme must be strictly scrutinized:

> "[I]f a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others, 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.' " *Cipriano*, 395 U.S. at 704, quoting, *Kramer v. Union Free School Dist.*, 395 U.S. 621, 627, 89 S.Ct. 1886, 23 L.Ed. 2d 583 (1969).

That determination must necessarily consider the interests of those persons disadvantaged by the classification. *Kramer*, 395 U.S. at 626.

> "Whether classifications allegedly limiting the franchise to those resident citizens 'primarily interested' deny those excluded equal protection of the laws depends, *inter alia*, on whether all those excluded are in fact substantially less interested or affected than those the statute includes." *Kramer*, 395 U.S. at 632.

A state cannot choose the mechanism of popular election to accomplish its aims and then skew voter classifications in order to evade equality of voting power among those similarly impacted by legislative pronouncements. *Hadley v. Junior College District*, 397 U.S. 50, 59, 90 S.Ct. 791, 25 L.Ed. 2d 45 (1970).

Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., supra, and *Ball v. James, supra*, established a two-prong test for reviewing an electoral scheme that does not implicate the principle of one person, one vote. Disenfranchising distinct classes of voters does not invoke strict scrutiny if:

(a) The election involves special and not merely general governmental powers; and

(b) There is a disproportionate effect on the class permitted to vote.

The overriding rational of both *Salyer* and *Ball* was based upon a factual finding that the districts in those cases primarily affected property owners (as opposed to others) in the district, to wit, those who pay should vote. Because, to use RTD's own finding, "the vast majority of buildings in the CBD [Central Business District] benefit assessment district have pass-through provisions in the tenant lease agreement" [AR 2387], and tenants have no

right to vote, those who actually must pay the assessment in this district have no voice in the decision at all.[17]

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[17] Although this Court considered the pass-through question in *Salyer*, the facts surrounding the district there were far different from the facts herein. In *Salyer* the water district consisted of 193,000 acres, all of it agricultural land, 85% farmed by one or another of four corporations. In discussing the tenant issue, the case did not reveal what percentage of the land in the district was under lease. Nevertheless, it is obvious from the general constitution of the district that it was far different from the heavily urban, largely commercial district which the RTD has formed in downtown Los Angeles. While there is no evidence in the record of exactly how many buildings in the MOS-1 are owner occupied and what percentage are leased, it is not reasonably disputable that many buildings in downtown Los Angeles are principally in the business of commercial leasing. Nor is there any reasonable dispute about the pervasiveness of the pass-through provisions for the buildings in this particular district.

In *Salyer* the Court only addressed the issue of indirect tenant responsibility for the assessments because of informal pass-throughs in the form of increased costs. It did not address the issue as presented here where the RTD knew that tenants in the "vast majority" of buildings have a direct contractual responsibility for paying the assessments pursuant to the express terms of their leases. 410 U.S. at 732-733. *Salyer* was also concerned about the difficulty of differentiating between tenants with leases and those on a month-to-month or similar basis. *Id.* Here, a vote could reasonably be limited to the inclusion of tenants with pass-through provisions in their leases; for purposes of this election, their interests are indistinguishable from those of the owners. Most importantly, *Salyer* found that "California has not left the lessee without remedy for his disenfranchised state" since the right to vote for the directors of the district is ongoing, and if that right to vote is of

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This is not to say that a properly formulated district which permitted only owners and tenants to vote would not satisfy the requirements of *Salyer* and *Ball*. In an intensely commercial district like downtown Los Angeles, providing residents the right to vote on a one-person, one-vote basis when they don't pay the assessments would also be extremely unfair to the owners and tenants. However, the inequalities of the statutory voting scheme, *as presently configured*, are fundamentally repugnant to the broad protections of the Fourteenth Amendment.

CONCLUSION

The Petition for Writ of Certiorari should be granted to ensure a meaningful referenda prior to imposing the special assessments.

Respectfully submitted,

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sufficient interest to the tenant he can negotiate with his landlord for that right in future elections. *Id.* Here, of course, there is no such opportunity. This election is a one-shot deal. If the tenant is not accorded the right to vote in the initial election, its economic interests are prejudiced for the entire 20-year life of the bonds, and its lease payments will drastically increase without its consent.

ORDER DENYING REHEARING

2/2 B032265 – S015986

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, Respondent

v.

HELEN M. BOLEN, Appellant
ATCHISON TOPEKA AND SANTA FE RAILWAY CO. et al., Intervener

(Filed Mar 26, 1992)

Petition for rehearing DENIED.

Motion to stay issuance of remittitur denied.

Mosk, J. and Kennard, J. are of the opinion the petition should be granted.

/s/ Baxter
Acting Chief Justice

[No. S015986. Jan. 30, 1992.]

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, Plaintiff and Respondent, v.
HELEN M. BOLEN, Defendant and Appellant;
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al., Interveners and Appellants.

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OPINION

ARABIAN, J. – The principal question before us is whether the equal protection guarantees of the state and federal Constitutions are violated by a statute conditioning the right to vote on the ownership of real property and allotting votes on the basis of its assessed value. We

hold that, under the narrow circumstances presented, such a voting scheme is reasonably related to the objectives of the statute and thus survives constitutional scrutiny.

I

A

The Southern California Rapid Transit District (hereafter SCRTD or transit district) is the lead agency for the construction, financing, and operation of "a comprehensive mass rapid transit system in the southern California area, and particularly in Los Angeles County." (Pub. Util. Code, § 30001, subd. (a).) The initial segment of the transit system, an 18.6-mile subway line connecting the central business district of downtown Los Angeles with North Hollywood and known as "Metro Rail," was approved by SCRTD in 1983. The first operating element of Metro Rail, a 4.4-mile rapid transit line extending from Union Station to Wilshire Boulevard and Alvarado Street, will cost an estimated 1.25 billion.[1] Financing for the project comes from a combination of sources – federal, state, and local – and, as a condition of federal funds, from the private sector. To help defray part of the enormous cost of the project, the Legislature has authorized SCRTD to establish "special benefit assessment districts" surrounding planned Metro Rail subway stations along

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[1] We are advised by the parties that the Metro Rail segment is now commonly called the "Red Line" and that the Los Angeles County Transportation Commission has recently assumed contractual responsibility for all uncompleted construction work on the first operating element.

the rapid transit corridor. (Pub. Util. Code, §§ 33000-33020.)

Although the transit district is statutorily authorized to establish assessment districts without voter approval, a referendum must be held if requested by the "owners of at least 25 percent of the assessed value of real property" within a proposed assessment district. (Pub. Util. Code, §§ 33002.1, 33002.2.) The statute limits voting at such a referendum, however, to those owners of real property who will be subject to assessment in the event an assessment district is approved. (Pub. Util. Code, § 33002.3.) Because in the present case residential property has been exempted from assessment, participation in any referendum is denied to non-property-owning residents and residential property owners alike within the proposed districts.

In addition to the foregoing franchise restrictions, the statute directs that votes in any referendum be allotted on the basis of the assessed value of the real property for ad valorem tax purposes. Qualified owners are allotted one vote for each $1,000 of assessed value of their real property. (Pub. Util. Code, § 33002.3, subd. (b).) Although votes are allotted according to assessed value, the statute requires that any assessments actually levied by the transit district be calculated on the basis of the parcel or floor area, depending on the condition of the real property. (Pub. Util. Code § 33002, subd. (a).)

B

We have described special or local assessments of the sort authorized by the Legislature here as a "compulsory

charge placed by the state upon real property within a pre-determined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein . . . . " (*San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154, 161 [228 Cal.Rptr. 47, 720 P.2d 935] (quoting *Spring Street Co. v. City of Los Angeles* (1915) 170 Cal. 24, 29 [148 P. 217], internal quotation marks omitted); their use as a means of financing the cost of municipal improvements has a lengthy pedigree in the law of public finance. (See, generally, 14 McQuillin, The Law of Municipal Corporations (3d ed. 1987 rev.) §§ 38.01-38.338.) Analogous to but differing in important respects from the power of taxation, the essential feature of the special assessment is that the public improvement financed through it confers a special benefit on the property assessed beyond that conferred generally. (See, e.g., *Norwood v. Baker* (1898) 172 U.S. 269 [43 L.Ed. 443, 19 S.Ct. 187]; *Spring Street Co. v. City of Los Angeles, supra,* 170 Cal. 24, 30-31.)

The uses of the special assessment as a financing device for public improvements are as manifold as the forms of such improvements themselves. It has been employed to finance such variegated public improvements as the construction of drains and sewers (*Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d 676 [129 Cal.Rptr. 97, 547 P.2d 1377] (*Dawson*)), residential subdivisions (*Burrey v. Embarcadero Mun. Improvement Dist.* (1971) 5 Cal.3d 671 [97 Cal.Rptr. 203, 488 P.2d 395] (*Burrey*)), gas distribution works (*County of Riverside v. Whitlock* (1972) 22 Cal.App.3d 863 [99 Cal.Rptr. 710] (*Whitlock*)), flood control projects (*City of Larkspur v. Marin County Flood*

Control etc. Dist. (1985) 168 Cal.App.3d 947 [214 Cal.Rptr. 689]), the redevelopment of blighted areas (*In re Redevelopment Plan for Bunker Hill* (1964) 61 Cal.2d 21 [37 Cal.Rptr. 74, 389 P.2d 538]), and the construction of a transit tunnel (*Larsen v. San Francisco* (1920) 182 Cal. 1).

In recent years, the special assessment has found a new field of application in the context of the construction of massive urban rapid transit systems, the extraordinary capital costs of which have heightened pressure for the exploration of novel forms of financing. Grounded in the fact that the installation of a transit station and related facilities at a point along a rapid transit corridor enhances the value of real property in the immediate vicinity by generating intensified commercial activity, the special assessment has been promoted as a means by which transit authorities can recoup some of the value added to the surrounding real property and the resulting "windfall" enrichment of property owners. (See Note, *Rapid Transit Financing: Use of the Special Assessment* (1977) 29 Stan.L.Rev. 795.)

As applied to rapid transit financing, the mechanics of the assessment process do not differ materially from its use in conjunction with other public improvements. Briefly, the authorized public entity adopts a resolution of its intention to impose an assessment, determines the boundaries of the planned assessment district, and computes the proposed levy. It is then generally required to submit the issue to voter approval through some form of referendum or protest procedure. On approval, bonds are issued to finance construction of the public improvement, the principal and interest being paid and the bonds

retired from income obtained through annual assessments.

C

In 1984, as part of its implementation of the assessment district revenue device, the SCRTD board appointed a benefit assessment policy task force, composed of representatives of a cross-section of property owners along the planned Metro Rail transit corridor and charged it with the task of conducting a study and making recommendations for structuring the benefit assessment districts. Following a series of public hearings, the task force submitted its recommendations to the SCRTD board in 1985. In substance, it found that the property within the proposed assessment districts would benefit from the installation of Metro Rail transit stations through enhanced land values, higher lease rates and occupancy levels, increased retail sales, easier visitor access, reduced parking costs, and the intensification of land development. Following public notice and additional hearings, the SCRTD board adopted the resolutions necessary to proceed with the establishment of the benefit districts.

After submission of the resolutions to the Los Angeles City Council as required by statute and modification by that body to exempt residential property owners within the proposed districts from assessment, the transit district took final action on the matter in July of 1985 by establishing two benefit districts, one covering real property within the one-half mile radii of the four Metro Rail transit stations planned for the downtown central business district and a second covering the real

property within a one-third mile radius of the Wilshire-Alvarado transit station.

The SCRTD board's final resolutions established an initial assessment rate of $.30 per square foot of assessable property, with a maximum rate of $.42 per square foot – a rate calculated to raise a total of $130.3 million in capital funding over a multiyear assessment period, or roughly 11 percent of the total cost of the 4.4-mile segment. The board also acceded to the exemption of residential property within the two benefit districts, required as a condition for Los Angeles City Council approval, and directed that the assessments otherwise be levied uniformly throughout the two districts and that they expire in the year 2008 or earlier. Although assessment notices for the 1986-1987 year were mailed to commercial property owners within the two districts, at the request of affected property owners the board subsequently deferred collection of any assessments until 1992.

Soon after the foregoing administrative action was taken, this suit was filed. Brought by SCRTD against its secretary, Helen M. Bolen, the complaint sought a writ of mandate directing her to certify additional resolutions of the SCRTD board authorizing the sale of $200 million in municipal bonds secured by revenues from the benefit assessments, the object of the suit being to judicially validate the actions of the board in establishing the two benefit districts before the bonds were issued.[2] (Cf.

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[2] The difference of roughly $70 million between the $130.3 million for capital expenditure and the $200 million bond cap

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Whitlock, supra, 22 Cal.App.3d 863, 868 & fn. 6; Code Civ. Proc., § 860 et seq.; Sts & Hy. Code, § 10601 et seq.) Several commercial property owners within the two proposed assessment districts and one tenant under a commercial lease were granted leave by the superior court to intervene in the action on the side of defendant Bolen.

After reviewing the administrative record supporting the task force's recommendations and taking additional evidence, the superior court upheld the property-based voting scheme at issue against claims that it violated the equal protection guarantees of the state and federal Constitutions. The trial court likewise validated the assessment districts in all other respects against the nonconstitutional objections of interveners and Bolen, entered judgment for the transit district on its claims, issued its writ directing defendant Bolen to certify the board resolutions authorizing issuance of the revenue bonds, and denied interveners any relief.

The Court of Appeal reversed. In its view, the property-based voting scheme was constitutionally flawed in two respects. First, it violated equal protection by invidiously discriminating against nonproperty owners. According to the Court of Appeal's reasoning, public transportation affects all citizens, not merely property owners, and the financing, operation, and maintenance of Metro Rail will impact all segments of the population of greater Los Angeles. Since the benefits and the burdens of

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authorized by the board covered interest costs, bond issuance fees, and administrative costs associated with the assessment district program.

the assessments fall indiscriminately on property owners and nonproperty owners alike, the principle of "one person, one vote" is triggered, requiring a compelling state interest to justify the exclusion of nonproperty owners from the franchise. Finding none, the Court of Appeal pronounced that part of the statutory voting scheme void.

In addition, the Court of Appeal concluded that the differing methods adopted by the Legislature in alloting [sic] votes and imposing assessments under the statute – the former linked to the ad valorem tax value of the property, the latter tied to parcel size – were fundamentally unfair because of the absence of proportionality between the allotment of votes and the burden of paying assessments. In the Court of Appeal's view, even if the principle of one person, one vote were inapplicable, in order to pass equal protection scrutiny the voting scheme was required to allot the most votes to those paying the largest assessments. After finding that these constitutionally defective referendum provisions could not be severed from the remainder of the statutory scheme, and ruling that the transit district lacked the power to exempt residential property owners from the assessment, the Court of Appeal invalidated the entire benefit assessment legislation.

We reverse the judgment of the Court of Appeal.

II

It is important to underline at the outset what is not before us in this case. The question at issue is not whether Metro Rail should be built and, if so, how its costs should

be distributed. Neither are we asked to consider directly the desirability or usefulness of special assessment districts as a financing device to recapture some of the economic value added to a commercial area as a result of locating a rapid transit station within it. Questions concerning metropolitan transportation policy in greater Los Angeles, and the economic, environmental and aesthetic aspects of Metro Rail and of benefit assessment districts, important as they undoubtedly are as public issues, are not presented by this case, having been debated, sometimes litigated (see, e.g., *Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist.* (1986) 185 Cal.App.3d 996 [230 Cal.Rptr. 225]), and resolved in other forums over the past decade.

What is at issue is the substantially narrower question whether the principle of "one person, one vote," laid down by the United States Supreme Court in *Reynolds v. Sims* (1964) 377 U.S. 533 [12 L.Ed.2d 506, 84 S.Ct. 1362] (*Reynolds*), applies to the property-based assessment district voting scheme described above, or whether the circumstances qualify as those in which the Constitution does not stand as a "roadblock[] in the path of innovation, experiment, and development among units of local government."[3] (See *Avery v. Midland County* (1968) 390

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[3] The requirement of substantial equality in voting power is derived from the basic tenet of *Reynolds* that democratic government is fundamentally representative in character. "[R]epresentative government is in essence self-government through the medium of elected representatives. . . . Full and effective participation by all citizens in . . . government requires, therefore, that each citizen have an equally effective voice in the election of [representatives]." (*Reynolds, supra*, 377 U.S. 533, 565 [12 L.Ed.2d 506, 529].)

U.S. 474, 485 [20 L.Ed.2d 45, 53-54, 88 S.Ct. 1114] (*Avery*).) As with much of the jurisprudence of equal protection, the answer to that question is significantly affected by the threshold selection of the appropriate level of judicial scrutiny.

If the principle of one person, one vote applies to voting in the assessment district referenda, the state is placed under a substantial burden of demonstrating a compelling justification for an exclusion from the voting franchise resting on the ownership of real property. If, however, this case qualifies as an exception to the principle of *Reynolds*, the constitutional test is the less demanding one of whether the voting scheme is either "wholly irrelevant" or "reasonably related" to the statutory objectives. As we shall explain, the crucial task in the case of property-based voting schemes is to identify the constitutionally relevant factual basis for selecting one level of scrutiny over the other.

A

The solution to the equal protection problem posed by the statutory classification in this case lies in a trio of post-*Reynolds* decisions of the high court which recognize an exception to the principle of one person, one vote. In substance these cases hold that the right protected by *Reynolds* – equality at the ballot box – is not fundamental under limited circumstances.[4] As the court formulated

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[4] Parenthetically, we reject at the outset the proposition that the principle of *Reynolds, supra*, 377 U.S. 533, is triggered

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the exception in *Avery, supra,* 390 U.S. 474, 483-484 [20 L.Ed.2d 45, 53], these circumstances consist of "a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other[s]. . . . " Where these two conditions jointly occur, the strict demands of *Reynolds, supra,* 377 U.S. 533, do not apply and voting power "may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions" (*Avery, supra,* at p. 484 [20 L.Ed.2d at p. 53]) without violating the guarantee of equal protection provided that the resulting classification is reasonably related to the statutory objective.

The first condition focuses on the extent to which the public entity involved is vested with governmental powers. In *Avery, supra* 390 U.S. 474, the court held that *Reynolds* applied to the election of a countywide "commissioners court," a local body exercising "general governmental powers over the entire geographic area served

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simply because a limited class of those otherwise qualified to vote is enfranchised by the voting scheme in issue. Despite sweeping language in early post-*Reynolds* decisions of the high court suggesting that enfranchising any class of qualified voters is itself sufficient to invoke the principle of one person, one vote, and thus to require the state to demonstrate a compelling need for the classification (see e.g. *Kramer v. Union School District* (1969) 395 U.S. 621, 627 [23 L.Ed.2d 583, 589-590, 89 S.Ct. 1886] (*Kramer*)), later cases have undermined that proposition to such an extent that it fairly can be doubted to be the rule. Indeed, we cannot accept it as an accurate statement of the high court's view of the compulsions of equal protection in the distribution of the voting franchise. (See *post,* p. 667 et. seq.)

by [that] body." (390 U.S. at p. 485 [20 L.Ed.2d at p. 53].) In so ruling, the court said that if the governmental entity involved makes a "large number of decisions having a broad range of impacts on all the citizens" within its jurisdiction, the principle of one person, one vote applies presumptively. (*Id.* at pp. 483-485 [20 L.Ed.2d at pp. 52-54].) In *Hadley v. Junior College District* (1970) 397 U.S. 50, 54 [25 L.Ed.2d 45, 49, 90 S.Ct. 791] the high court elaborated on this requirement, applying the presumption whenever "important governmental functions," including, as in *Hadley*, those as "vital" as education are involved. Thus, "as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election. . . . " (*Id.* at p. 56 [25 L.Ed.2d at pp. 50-51].)

The second branch of the equal protection analysis looks to the impact of the election outcome on voters and nonvoters. It focuses on the extent to which a contested statutory voting classification is supported by "genuine difference[s] in the relevant interests" of those enfranchised and those excluded by a given voting scheme. (See *Lockport v. Citizens for Community Action* (1977) 430 U.S. 259, 268 [51 L.Ed. 2d 313, 322-323, 97 S.Ct. 1047] (*Lockport*) (upholding concurrent majority voting requirements for city and non city residents in county wide referendum).) If the class enfranchised by the scheme at issue is "primarily affected" or "primarily interested" in the election and "those excluded are in fact substantially less interested or affected than those the statute includes," (*Kramer,*

supra, 395 U.S. at p. 632 [23 L.Ed.2d at p. 592]), the voting scheme does not deny equal protection so long as the statutory classification is not "wholly irrelevant" to the achievement of the statute's objectives. (*Kotch v. Pilot Comm'rs* (1947) 330 U.S. 552, 556 [91 L.Ed. 1093, 1096-1097, 67 S.Ct. 910]; *McGowan v. Maryland* (1961) 366 U.S. 420, 425-426 [6 L.Ed.2d 393, 398-399, 81 S.Ct. 1101].)

B

In *Salyer Land Co. v. Tulare Water District* (1973) 410 U.S. 719 [35 L.Ed.2d 659, 93 S.Ct. 1224] (*Salyer*), the conditions required to support an exception to the principle of *Reynolds* materialized in the form of a contested election of the board of directors of a California water storage district. In ruling that a property-based voting scheme was *not* subject to the principle of one person, one vote, the court invoked both the "special-purpose unit of government" and the "primarily affected or interested" criteria to anchor its result.

Comprising 193,000 acres of intensively cultivated farmland, the water storage district was populated by only 60 adults, most of whom were employed by one of the 4 corporations that farmed 85 percent of the land within it. The statutory voting scheme at issue in *Salyer* limited voting in the general election for the district board of directors to owners of land within the water storage district, apportioning votes according to the assessed value of district land. (*Salyer, supra*, 410 U.S. 719, 724-725 [35 L.Ed.2d at pp. 664-665].) In upholding the statutory limitation on voting against claims by resident nonproperty owners that it violated equal protection by

failing to comply with the principle of one person, one vote, the court first pointed out that although the district exercised some typical governmental powers, these were incidental to its limited authority and primary purpose of "provid[ing] for the acquisition, storage, and distribution of water for farming in the Tulare Lake Basin." (*Id.* at p. 728 [35 L.Ed.2d at p. 666].) Moreover, the district's activities affected landowners disproportionately since "[a]ll of the costs of district projects are assessed against land . . . in proportion to the benefits received [and] . . . charges for services rendered are collectible from persons receiving their benefit in proportion to the services." (*Id.* at p. 729 [35 L.Ed.2d at p. 667].)

Because there was "no way that the economic burdens of district operations [could] fall on residents *qua* residents, and the operation of the district[] primarily affect[s] land within [its] boundaries," the court concluded that "the popular election requirements enunciated in *Reynolds* . . . and succeeding cases are inapplicable to elections such as the general election of [the] Water District." (*Salyer, supra,* 410 U.S. at pp. 729-730 [35 L.Ed.2d at p. 667].) The equal protection question, the court said, was simply "whether the State's decision to deny the franchise to residents of the district while granting it to landowners was 'wholly irrelevant to achievement of the [statute's] objectives,' [citation]." (*Id.* at p. 730 [35 L.Ed.2d at pp. 667-668].)

Salyer, supra, 410 U.S. 719, is analytically linked to the court's subsequent decision in *Ball v. James* (1981) 451 U.S. 355 [68 L.Ed.2d 150, 101 S.Ct. 1811] (*Ball*). On facts strikingly different from those of *Salyer,* the court reached an identical result, ruling that the principle of *Reynolds,*

supra, 377 U.S. 533, did not apply to an election for the directors of the Salt River District, a water reclamation district encompassing 236,000 acres in central Arizona whose governing board was elected by those owning land within the district, voting power being apportioned according to the number of acres owned. (*Ball, supra*, 451 U.S. at pp. 370-372 [68 L.Ed.2d at pp. 162-164].)

Like the water storage district in *Salyer*, the primary purpose of the Salt River District was the conservation and distribution of water owned by its landowning membership. But unlike the district in *Salyer*, the Salt River District had constructed dams and other public works to generate hydro-electric power. By 1980, the district was one of the largest public utilities in the state. It provided power to almost half of the population of Arizona, including much of metropolitan Phoenix, met most of its capital and operating costs through electric power revenues, and had over $3 billion in long-term debt; 40 percent of the water stored by the district was delivered to urban areas for nonagriculatural [sic] uses.

Despite recognition that these activities were "more diverse and affected far more people" than those in *Salyer, supra*, 410 U.S. 719, the court held that "these distinctions do not amount to a constitutional difference." (*Ball, supra*, 451 U.S. at pp. 365-366 [68 L.Ed.2d at pp. 159-160].) This was so, the majority reasoned, because despite its manifold activities, the Salt River District did "not exercise the sort of governmental powers that invoke the strict demands of *Reynolds*." (*Id.* at p. 366 [68 L.Ed.2d at p. 160].) Its powers did not run the gamut of those typical of a general government, and those that it did exercise were incidental to and in the service of its

relatively narrow mission of storing, conserving, and distributing water to its landowner members. (*Id.* at pp. 368-369 [68 L.Ed.2d at pp. 161-162].) "The constitutionally relevant fact is that all water delivered by the Salt River District . . . is distributed according to land ownership, and the District does not and cannot control the use to which the landowners who are entitled to the water choose to put it." (*Id.* at pp. 367-368 [68 L.Ed.2d at p. 161], fn. omitted.)

Coordinate with its limited purpose and functions, the reclamation district's activities fell disproportionately on the specific class which the statutory voting scheme enfranchised – its landowner membership. Only they were subject to the acreage-based taxing power of the district, only they had committed capital to the district through assessments and only their land was subject to liens to secure district bonds. (*Ball, supra,* 451 U.S. at p. 370 [68 L.Ed.2d at pp. 162-163].) Since the district's operations had a disproportionate effect on those enfranchised, "the voting scheme . . . [was] constitutional because it bears a reasonable relationship to its statutory objectives." (*Id.* at p. 371 [68 L.Ed.2d at p. 163].)

No one reviewing this area of the high court's equal protection jurisprudence can fail to be impressed with the result in *Ball* – not because the opinion represents an analytical advance over the principles developed in *Salyer,* but because it illustrates the majority's steadfast willingness to adhere to the *Salyer* analysis in the face of a record presenting such compelling, if "constitutionally

irrelevant," facts.[5] Clearly, in light of *Ball*, as far as the governmental function analysis is concerned, the constitutionally decisive fact is that the voting scheme at issue reflects the "narrow primary purpose for which the [public entity] is created."[6] (*Ball, supra*, 451 U.S. at p. 369 [68 L.Ed.2d at p. 162].)

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[5] A third decision in the trilogy of high court opinions upholding property-based voter qualification schemes bears mention. In *Associated Enterprises, Inc. v. Toltec District* (1973) 410 U.S. 743 (35 L.Ed.2d 675, 93 S.Ct. 1237], the court, in a brief *per curiam* ruling decided the same day as *Salyer, supra*, 410 U.S. 719, held that a Wyoming statute conditioning voting in a referendum authorizing the establishment of a watershed district on property ownership did not violate equal protection, the district being "a governmental unit of special or limited purpose whose activities have a disproportionate effect on landowners within the district."(410 U.S. at p. 744 [35 L.Ed.2d at p. 677].)

[6] Between *Salyer and Ball*, this court decided *Choudhry v. Free* (1976) 17 Cal.3d 660 [131 Cal.Rptr. 654, 552 P.2d 438]. There we invalidated a provision of the Irrigation District Law (Wat. Code, § 21100), requiring directors of irrigation districts to be freeholders, as it applied to prevent a nonproperty owner's candidacy for director of the Imperial Irrigation District. In part, our decision in *Choudhry* was grounded in equal protection concerns arising from the statute's interference with ballot access and the "real and appreciable impact" test on the electoral process formulated in *Bullock v. Carter* (1972) 405 U.S. 134, 144 [31 L.Ed.2d 92, 100, 92 S.Ct. 849]. (17 Cal.3d 660, 664-665; *cf. Anderson v. Celebrezze* (1983) 460 U.S. 780 [75 L.Ed.2d 547, 103 S.Ct. 1564].) In other respects, our decision rested on a "governmental function/specially affected" analysis derived from *Reynolds, supra*, 377 U.S. 533, and its progeny. (17 Cal.3d 660, 666-668.) We distinguished the scope of the governmental powers of the water storage district in *Salyer*

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Viewing the record in this case through the lens of that insight, one conclusion seems evident. Manifestly, the benefit districts at issue here are not invested with and do not exercise powers remotely similar to the "general governmental powers" to which the principle of *Reynolds, supra,* 377 U.S. 533, presumptively applies. And unlike the substantial but narrowly directed complement of powers exercised by the water districts in *Salyer* and *Ball,* the benefit assessment districts lack virtually any of the incidents of government. In fact, they are little more than formalistic, geographically defined perimeters whose *raison d'être* is to serve as the conceptual medium for the recognition of economic benefits conferred and the imposition of a corresponding fiscal burden. (Compare *Whitlock, supra,* 22 Cal. App.3d 863, 874 [assessment district "simply denotes the land area benefited by the proposed improvements and to be assessed for the costs thereof"], and *Dawson, supra,* 16 Cal.3d 676, 683 [special assessment district "is not a legal entity with officers and corporate rights and duties"], with Burrey, *supra,* 5 Cal.3d 671, 677 [*Reynolds* applied to municipal improvement district "because it is the sole local governmental unit . . . carrying out the basic municipal functions which directly affect and benefit each of the district's residents"], and *Curtis v. Board of Supervisors* (1972) 7 Cal.3d

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from the more extensive powers of the Imperial Irrigation District and contrasted the limited impact of district activities in *Salyer* with those of the Imperial Irrigation District, the largest irrigation district in California and one the scope and effects of which were akin to the reclamation district in *Ball, supra,* 451 U.S. 355 (See 17 Cal.3d 660, 663-664, 667-668.)

942, 959 & fn. 20 [104 Cal.Rptr. 297, 501 P.2d 537] [statutory limitations on voting for municipal incorporation unconstitutional where city would exercise "general governmental powers"].)

The transit district itself, of course, *is* invested with and exercises substantial governmental powers; indeed, it has been described as having "virtual autonomy in self-governance" and "a regional governmental body with statewide concerns." (*Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist., supra,* 185 Cal.App.3d 996, 1000.) But SCRTD is not the governmental body implicated by the voting scheme at issue and the range of governmental powers exercised by it are irrelevant to our inquiry.

The political entities constitutionally relevant to the challenged voting scheme are the limited-purpose benefit districts, the organizing principle of which is the recoupment of some of the added economic value conferred on commercial property resulting from its proximity to the transit stations. The narrow purpose for which the districts are established is reflected in a voting scheme that limits the franchise to those who will directly and primarily enjoy the benefits of transit station siting and shoulder the reciprocal burden of assessments – owners of commercial property within the two proposed districts. In light of that congruence, we are satisfied that the governmental units at issue lack the indicia of "general governmental powers" and, on this leg of the equal protection inquiry, qualify as the sort of "special-purpose units of government" that are not subject to the strict requirements of *Reynolds, supra,* 377 U.S. 533.

C

We turn now to the cognate question whether the challenged voting classification is supported by a "genuine difference in the relevant interests" of those enfranchised and those excluded. (*Lockport, supra*, 430 U.S. 259, 268 [51 L.Ed.2d 313, 322-323].) The analysis is advanced by a recognition of the "single-shot" nature of referenda. "In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their representatives. . . . The policy impact of a referendum is also different in kind from the impact of choosing representatives. . . . [T]he referendum puts one discrete issue to the voters. That issue is capable . . . of being analyzed to determine whether its adoption or rejection will have a disproportionate impact on an identifiable group of voters." (*Id.* at p. 266 [51 L.Ed.2d at p. 321].) At the outset, then, we must recognize that the issue-specific nature of referenda in general and of the assessment district elections in particular reduces somewhat the prominence equal protection values would assume if representational interest were at stake in the challenged election.

Resolution of this part of the equal protection inquiry also requires us to make careful distinctions in identifying constitutionally relevant facts. While certain broad criteria are clear, the analysis ineluctably implicates a measure of constitutional line drawing. The touchstone of the high Court's "primarily affected or interested" doctrine is the extent of the impact of the election of those within and those outside the challenged voting classification. As noted, two complementary estimates must be made: whether the class of eligible voters enfranchised is

disproportionately affected by the election issue, and whether those excluded are in fact substantially less interested in its outcome. Importantly, the court has stressed that, in weighing the statutory classification against the factual record, absolute distinctions between affected classes are not constitutionally compelled. The inquiry is the relative one of identifying differences sufficiently substantial to sustain the classification; the fact that some of those excluded from voting in the election may be "affected" by its outcome is not in itself fatal: "[c]onstitutional adjudication cannot rest on any such 'house that Jack built' foundation. . . . " (*Salyer, supra*, 410 U.S. 719, 731 [35 L.Ed.2d at p. 668].)

From the undeniably correct premise that public transportation is an issue affecting all citizens, the Court of Appeal reasoned that, the development of an urban mass transit system being crucial to the orderly growth of a metropolitan area, its financing, construction and operation necessarily affected all segments of the population. Specifically noting the interests of commercial lessees within the assessment districts who are excluded from voting in referenda, but championing as well what it termed the "same" interests of "other residents, both within and without the [benefit districts] who will be impacted" by Metro Rail, the Court of Appeal concluded that, along an axial line, this case was factually closer to two municipal bond referendum cases decided by the high court, *Cipriano v. City of Houma* (1969) 395 U.S. 701 [23 L.Ed.2d 647, 89 S.Ct. 1897] (*Cipriano*), and *Phoenix v. Kolodziejski* (1970) 399 U.S. 204 [26 L.Ed.2d 523, 90 S.Ct. 1990] (*Phoenix*), than it was to *Salyer or Ball*. It was thus one in which the principle of one person, one vote

applied, the court concluded. Our analysis of these cases and the facts surrounding the benefit districts impels us to disagree with the Court of Appeal.

In the two cases relied upon by the Court of Appeal to support its result, the high court concluded that the differences "between the interests of property owners and the interests of nonproperty owners [were] not sufficiently substantial to justify excluding the latter from the franchise." (*Phoenix, supra,* 399 U.S. 204, 209 [26 L.Ed.2d 523, 527].) In *Cipriano,* a municipally owned utility called an election to approve the issuance of $10 million in revenue bonds to finance improvements to the utility. Under state law, only "property taxpayers" were qualified to vote in such a referendum. The court invalidated the voting limitation as underinclusive, concluding that those excluded from voting were not " 'in fact substantially less interested or affected [by the outcome] than those the statute includes.' " (395 U.S. at p. 704 [23 L.Ed.2d at p. 651], quoting *Kramer, supra,* 395 U.S. 621, 632 [23 L.Ed.2d 583, 592].) Since the operations of the public utility affected virtually every resident of the governmental unit (the city) – the rates of all users would be directly affected by the utility's debt service requirements, and the bonds were paid out of utility revenues rather than property taxes – the impact of the revenue bond issue on those permitted to vote had little to do with their status as property owners. The challenged scheme thus excluded qualified voters who were "as substantially affected and directly interested in the matter voted upon as . . . those . . . permitted to vote." (*Cipriano, supra,* 395 U.S. at p. 706 [23 L.Ed.2d at pp. 651-652].)

Similarly, in *Phoenix, supra*, 399 U.S. 204, the court invalidated a statutory voting scheme restricting the franchise to real property taxpayers in a referendum called by the city to approve general obligation bonds, the proceeds of which were to be used to finance multiple municipal improvements – "the city sewer system, parks and playgrounds, police and public safety buildings, and libraries." (*Id.* at p. 206 [26 L.Ed.2d at p. 526].) In holding that the *Reynolds* (*supra*, 377 U.S. 533) principle of one person, one vote applied to the bond referendum, the court identified three reasons why the challenged voting classification was not supported by sufficiently substantial differences between those permitted to vote and those excluded.

First, it was plain that all the residents of the municipality had a substantial and indistinguishable interest in the public facilities and services to be financed by the bond issue and those would be substantially affected by the election outcome. (*Phoenix, supra*, 399 U.S. at p. 209 [26 L.Ed.2d at pp. 527-528].) Second, although under state law the city theoretically had recourse to a real property tax levy to support its bond issue, historically it had financed more than half of its debt requirements by revenues from nonproperty taxes, taxes paid by property and nonproperty owners alike. (*Id.* at pp. 209-210 [26 L.Ed.2d at pp. 527-528].) Finally, the court recognized that a significant portion of those property taxes paid by owners to finance the bonds would ultimately be passed on to lessees in the form of higher rents, and to the general public as increases in the cost of goods and services, thereby dispersing the financial burden beyond the limited class enfranchised. (*Id.* at p. 210 [26 L.Ed.2d at p. 528].)

D

Applying the teaching of these two cases to the circumstances presented by the record here, we reach a conclusion contrary to that of the Court of Appeal. First and foremost, unlike *Cipriano, supra,* 395 U.S. 701, and *Phoenix, supra,* 399 U.S. 204, in which it could be said that virtually all of the residents of the governmental unit had a beneficial interest in the outcome of the bond referendum – the prospect of improved utility service for resident consumers in the one case and an array of civic improvements and services in the other – nonvoting residents of the assessment districts have no specific beneficial interest in the proceeds of the assessments distinguishable from that of every other resident of the multicounty area comprising the transit district.

Although nonproperty owning residents of the assessment districts are "affected" by the outcome of the referendum, they are no more affected than any other resident of the greater Los Angeles metropolitan area served by Metro Rail. It is not contended by any party that the state or federal Constitution requires that assessment district referenda be open to all qualified electors in the entire geographical area served by Metro Rail. Since the beneficial impact of the assessment districts on nonvoting residents is indistinguishable from the impact on residents of the Metro Rail service area outside of the benefit districts, that impact is insufficient to require extension of the franchise to the excluded class.

Moreover, again unlike the circumstances in *Cipriano, supra,* 395 U.S. 701, and *Phoenix, supra,* 399 U.S. 204, the

economic burden of the assessments does not fall indiscriminately on property and nonproperty owning residents of the benefit districts alike. If the benefit districts are approved, the levy will fall directly on precisely that limited class enfranchised by the statutory scheme – owners of commercial property within the district; nonvoting residents of the districts will bear no discernably [sic] direct financial burden as a result of the assessments, nor will those residing outside the benefit districts.

And while one possible result of the failure to gain voter approval of the benefit districts may be to force SCRTD to look elsewhere to make up for lost funding, the possibility of a future search for alternative revenues that could conceivably result in some financial impact on the taxpayers of much of Southern California in the form of additional levies does not mean that all qualified voters residing within the benefit districts must be permitted to vote. Again, the economic effect is remote and diluted rather than direct and substantial, and for that reason does not implicate interests sufficient to trigger the principle of *Reynolds, supra,* 377 U.S. 533. As in *Salyer, supra,* 410 U.S. 719, 729 [35 L.Ed.2d 659, 667], "there is no way that the economic burdens" of the assessment districts "can fall on residents *qua* residents."

Third, unlike both *Cipriano, supra,* 395 U.S. 701, and *Phoenix, supra,* 399 U.S. 204, this is not a case in which those residents of the governmental unit denied the franchise will in fact contribute to the burden of financing Metro Rail as directly as those enfranchised. The constitutionally decisive fact is that, under the assessment scheme, only commercial real property within the two districts will be assessed – an immediate and tangible

economic burden that is confined to commercial property and does not implicate directly any economic interest of either non-property-owning residents or residential property owners within the assessment districts.

As in *Salyer, supra*, 410 U.S. 719, and *Ball, supra*, 451 U.S. 355, the "activities" of the assessment districts – the raising of revenue to defray in part the cost of Metro Rail – will affect disproportionately owners of commercial property within them; it is they who will most directly feel both the beneficial economic effects of the transit station locations and bear the financial burden of the annual assessments. Likewise, all district "costs" (the assessments themselves) "are assessed against land"; district "operations" (again, the raising of revenue to finance public improvements directly benefiting the enfranchised class) "primarily affect the land within [district] boundaries." (410 U.S. at p. 729 [35 L.Ed.2d at p. 667].)

This is not to deny that some within the benefit districts who are not permitted to vote will be more "affected" by the proposed assessments than those outside. Notably, we may assume, as did the court in *Salyer, supra*, 410 U.S. 719, that a subclass of those within the two benefit districts whose economic interests are analogous to those of commercial property owners – commercial lessees in this case – will be affected secondarily by the assessments because of "pass through" clauses in their lease agreements. But so, too, are consumers of goods and services retailed by this subclass "affected," as the financial consequences of the assessments are presumably distributed throughout the region. In the specific factual context of this case, however, we do not find this prospect

sufficiently substantial to invoke the demands of *Reynolds, supra*, 377 U.S. 533.

As in *Salyer, supra*, 410 U.S. 719, we think that recognition of the indirect and secondary affect on this limited class smacks too much of "house that Jack built" casuistry to support constitutional determinations. As mentioned, the equal protection inquiry is one of constitutional line drawing; the cases do not teach that the limited class enfranchised "must be the only parties at all effected . . . or that their entire economic well-being must depend on [that special-purpose unit of government]." (*Ball, supra*, 451 U.S. 355, 371 [68 L.Ed.2d 150, 163].) Voting power may constitutionally be apportioned "to give greater influence to the constituent groups found to be *most* affected by the governmental unit's functions." (*Lockport, supra*, 430 U.S. 259, 266 [51 L.Ed.2d 313, 321], italics added.) In short, we are satisfied that those excluded from voting under the statutory scheme at issue in this case are not "as substantially affected and directly interested in the matter voted upon as are those who are permitted to vote." (*Cipriano, supra*, 395 U.S. 701, 706 [23 L.Ed.2d 647, 651-652].)

Finally, we cannot fail to note the apparent inconsistency of interveners on this issue. Although urging that the principle of *Reynolds, supra*, 377 U.S. 533, applies, they nevertheless acknowledge the superior fairness of a voting scheme that would offend the principle of one person, one vote, by contending that the proper voting classification would include commercial property owners and tenants as well as residents of the benefit districts. Were the *Reynolds* principle to prevail here, however, it is district

residents, precisely that class least affected by the assessment scheme, who would be enfranchised, to the exclusion of nonresident corporate property owners and probably most commercial tenants of the two districts. As in *Salyer, supra,* 410 U.S. 719, 730 [35 L.Ed.2d 659, 667], to sustain interveners' contention "would not result merely in the striking down of an exclusion from what was otherwise a delineated class, but would instead engraft onto the statutory scheme a wholly new class of voters in addition to those enfranchised by the statute."

We conclude, therefore, that neither the "special-purpose unit of government" nor the "primarily affected or interested" analysis yields a requirement that the principle of one person, one vote must be applied to benefit assessment district referenda.

E

Of course, respondents are entitled to have their claims adjudicated under the equal protection requirement applicable in this case, namely, that the statutory voting scheme not be " 'wholly irrelevant' " to the " 'achievement of the [statutory] objectives,' [citation]." (*Salyer, supra,* 410 U.S. 719, 730 [35 L.Ed.2d 659, 668].) The question whether the voting classification meets that constitutional standard is one that we examine in the abstract; it is not whether we would authorize the same exclusions were we the Legislature, but whether "any state of facts reasonably may be conceived to justify" a voting scheme limiting the franchise to owners of record of commercial real property located within the benefit districts. (*Id.* at p. 732 [35 L.Ed.2d at pp. 668-669], citing

McGowan v. Maryland, supra, 366 U.S. 420, 426 [6 L.Ed.2d 393, 399].)

The challenged scheme denies the vote to two identifiable subgroups within the benefit districts – residents, whether lessees or owners of non-commercial real property, and lessees of commercial property. The Legislature reasonably could have permitted the exclusion of the former on the obvious ground that limiting voting to those who will directly bear the cost of the assessments is demonstrably fairer or more equitable than including those whose affirmative vote carries no personal financial consequences or risk. As did the court in *Salyer, supra,* 410 U.S. 719, 731 [35 L.Ed.2d 659, 668], we conclude that nothing in the equal protection clause precludes the total exclusion of "those who merely reside within the district."

The case with respect to commercial lessees is only slightly less evident. As noted, interveners' claim with respect to this class is that, by virtue of "pass through" clauses in commercial lease agreements, they (or some of them) will bear a financial impact as a result of the assessments that is so closely analogous to that affecting the class enfranchised as to be indistinguishable for equal protection purposes. Here again, however, it was for the Legislature to draw the line. And again, as in *Salyer, supra,* 410 U.S. 719, 732 [35 L.Ed.2d 659, 668-669], we think that it reasonably could have drawn the line that it did in light of the significant administrative difficulties that foreseeably would have arisen had the vote been extended to the "pass through" class of commercial tenants.

As the transit district points out, including this class within those enfranchised would require those administering the referenda to determine a multitude of discrete voter qualification issues – identifying those commercial leases with "pass through" provisions and those without, the percentage of the assessment passed to particular tenants, whether partial "pass throughs" are permitted, the duration of commercial leases, and other electoral minutiae which have not occurred to us. Although imperfect, the "rough accommodation" to practicality and administrative convenience chosen passes constitutional muster. (*Salyer, supra,* 410 U.S. 719, 732 [35 L.Ed.2d 659, 668-669]; *Dandridge v. Williams* (1970) 397 U.S. 471, 485-487 [25 L.Ed.2d 491, 501-503, 90 S.Ct. 1153]; *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 295, fn. 2 [93 Cal.Rptr. 455, 481 P.2d 823]; *United States Steel Corp. v. Public Utilities Com.* (1981) 29 Cal.3d 603, 613-614 [175 Cal.Rptr. 169, 629 P.2d 1381].) We cannot conclude that the Legislature was unreasonable in drawing the line so as to deny the franchise to this class.

III

The conclusion that the distribution of the elective franchise in benefit district referenda is not subject to the strict demands of *Reynolds, supra,* 377 U.S. 533, also yields the answer to interveners' ancillary claim that the manner in which the Legislature chose to apportion votes and levy assessments among those enfranchised is constitutionally defective. The specific contention is that principles of equal protection *require* that those who pay the most in assessments be alloted [sic] the most votes in the referenda. Absent this substantial "proportionality"

between voting power and financial burden, interveners argue, the statutory voting scheme lacks a rational basis.

As authority for this argument, interveners rely entirely on a sentence in *Ball, supra,* 451 U.S. 355, and language in the opinion of the Court of Appeal in *Whitlock, supra,* 22 Cal.App.3d 863. Interveners seize on the statement in *Ball* that an acreage-based vote allotment scheme is rational because it "reasonably reflects the relative risks . . . incurred [by] landowners and the distribution of the benefits and burdens of the District's water operations." (451 U.S. at p. 371 [68 L.Ed.2d at p. 163], fn. omitted.) They also invoke language in *Whitlock* sustaining as rational a statutory provision for the termination of assessment proceedings on the protest of owners of more than one-half of the land affected.[7]

We cannot regard these brief remarks as definitive on the issue, however, impliedly condemning alternative vote allotment schemes. In *Salyer, supra,* 410 U.S. 719, 734

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[7] The precise claim in *Whitlock* was that the protest scheme under review – a section of the special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Sts. & Hy. Code, § 2905) – discriminated against small landowners by permitting assessment proceedings to be aborted by those owning more than one-half of the total land area affected. The Court of Appeal rejected this argument in the following language: "Since only those landowners who are directly benefited are charged with the cost of the improvements in proportion to the benefit conferred and since land area bears some reasonable relationship to the amount of the assessment, there is a rational basis for making the governmental decision subject to landowners' protest and in measuring the sufficiency of the protest by the land area protested." (22 Cal.App.3d at p. 876.)

[35 L.Ed.2d 659, 669-670], the court upheld a statutory scheme that alloted [sic] votes according to the tax assessed value of real property and imposed assessments on a project-specific basis according to the benefit conferred, a divided arrangement not unlike the statutory scheme challenged in this case. The high court declined to declare such a scheme not rationally based, given the rough proportionality between voting strength and assessment burden. (*Ibid.*) As in *Salyer*, we think that the Legislature was entitled to assume that within these relatively small benefit assessment districts, assessed valuation bears a rough relationship to lot or building size and that the vote allotment and assessment formulas are thus not unreasonably disproportionate for equal protection purposes.[8]

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[8] It is true that *Salyer* was decided prior to the passage of Proposition 13, an event that, as interveners vigorously remind us, transformed the California real property tax landscape. By making the assessed value of real property for tax purposes essentially dependent on sale price. Proposition 13 has a "wild card" effect on property-based bifurcated vote allotment/assessment schemes such as the one at issue here. Since property held longer will be assessed for tax purposes at a lower rate than property recently transferred and reassessed (assuming continuing inflationary trends in real property values), a referendum scheme that allots votes according to tax assessment value may result in substantial disparities in the voting power and assessment burdens of real property of comparable market value and square footage. As interveners point out, under the statutory scheme, the voting power of comparably sized parcels within the same benefit district may vary by as much as (in one case) a factor of 20, depending on the date of acquisition.

(Continued on following page)

Alternatively, the conclusion that the circumstances surrounding the benefit district referenda satisfy the constitutional criteria for an exception to the principle of one person, one vote, necessarily means that the proponent of the challenged statutory voting scheme must demonstrate only that it is not "wholly irrelevant" to the objectives of the statute. (*Salyer, supra,* 410 U.S. 719, 730 [35 L.Ed.2d 659, 668].) The equal protection issue raised by interveners' proportionality claim, therefore, is simply whether the divided arrangement chosen by the Legislature bears some reasonable relation to the statutory scheme. That is, we perceive no constitutional basis independent of *Reynolds, supra,* 377 U.S. 533, for what is, in substance, simply an argument for a scheme of weighted voting different from that chosen by the Legislature, one that gives greater voting power to some property owners rather than others.[9]

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We have upheld substantial inequalities in the assessed value of comparable properties for ad valorem tax purposes against equal protection challenge and validated as reasonable the acquisition-value approach to property assessment embodied in Proposition 13. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 233-236 [149 Cal.Rptr. 239, 583 P.2d 1281].) The fact that such a constitutionally valid tax assessment system may have the marginal result of diluting voting power in an assessment referendum is an inequality that the Legislature can remedy by amending the voting scheme; it does not constitutionally invalidate the voting classification per se.

[9] Interveners make much of the fact that following passage of the benefit assessment legislation, the Legislature

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That said, it is not difficult to imagine legitimate concerns that might have motivated the Legislature to adopt differing formulas for the allotment of votes and the calculation of assessments. It might, for example, have adopted the working assumption that building or lot size bears a rough but reasonably direct relationship to the enhanced economic benefits resulting from the location of Metro Rail facilities, a supposition that would rationally justify basing assessment calculations on square footage or parcel size. It may be true, as interveners point out, that such an assumption is faulty when applied to warehouse space, for example, but at this level of equal protection analysis we must deal in imperfect generalities. Given the interests at stake here, the Legislature has wide latitude within which to draw lines before a reviewing court can say it has crossed over into the zone of complete irrelevancy.

Likewise, the Legislature's direction that current ad valorem tax assessment rolls be used to identify qualified voters and allot votes has the merit of accuracy, simplicity and administrative convenience. At least where the countervailing interests are not fundamental in the constitutional sense or otherwise entitled to special solicitude, these are virtues that are not lightly abandoned. (*Salyer,*

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passed an amendatory measure which would have mandated both voting allotment and assessments on a square footage or parcel basis; the measure, however, was vetoed by the Governor. As noted in the main text, the issue before us is one of constitutional limitations on the scope of legislative classifications, not "fairness" *simpliciter;* for that reason, these post hoc events have little force.

supra, 410 U.S. 719, 732-733 [35 L.Ed.2d at pp. 668-669].) It was hardly unreasonable for the Legislature to direct that votes be allotted by means of existing tax assessment rolls – an accurate, convenient, and verifiable basis for notice and one that permits benefit districts to be approved at referenda *before* undertaking the administratively detailed, prolonged, and costly task of calculating and verifying the square footage of each parcel subject to assessment.

Whatever the case, although both alloting [sic] votes and calculating assessments according to square footage might be more "equitable" in that it would tend to equalize the burden of assessments and voting power, we discern no constitutional basis for compelling the Legislature to adopt such an arrangement, on pain of having its voting scheme invalidated as lacking a rational basis.[10]

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[10] Defendant Bolen summarily suggests that the statutory voting scheme violates article I, section 22, of the California Constitution; that section provides that "the right to vote or hold office may not be conditioned by a property qualification." We have long since construed article I, section 22 to " 'refer to the qualification of electors entitling them to vote at the ordinary elections, local and general, held in the course of the usual functions of civil government.' [Citation.]" (*Tarpey v. McClure* (1923) 190 Cal. 593, 606 [213 P. 983] [water storage district]; see also *Wheeler v. Herbert* (1907) 152 Cal. 224, 232 [92 P. 353]; *Potter v. Santa Barbara* (1911) 160 Cal. 349, 355 [116 P. 1101] [road improvement district]; *Martinelli v. Morrow* (1916) 172 Cal. 472, 473 [156 P. 1017] [comparable constitutional provision applies to political subdivisions exercising "governmental functions," not to "limited purpose" government such as municipal water district].) Nothing in the record or the arguments of the parties in this case persuades us that we should revisit these holdings.

IV

A final matter requires our attention. As noted, in addition to holding that the referendum voting scheme violated principles of equal protection, the Court of Appeal also held that SCRTD lacked legal authority to exempt from assessment residential property within the two benefit districts. It reached this conclusion on non-constitutional grounds, concluding that only the Legislature possessed the power to grant exemptions from special assessments and that it had neither done so here nor delegated that authority to SCRTD. We disagree. The Legislature expressly authorized the relevant local government to amend the transit district board's resolution creating the assessment district in various ways, including exempting residential property from assessment, and empowered SCRTD to adopt the resolution as amended.

Specifically, Public Utilities Code section 33001.5 requires that, before being established, any benefit district proposed by SCRTD be submitted to the relevant "governing body," defined by section 33001.5, subdivision (d), as "the city council of a city in which the proposed benefit district is located" or county board of supervisors if not within a city. The statute goes on to empower the governing body, after a public hearing, to "approve, or amend and approve, as amended, or disapprove the geographic boundaries of the benefit district and the method of assessment," following which the SCRTD board may by a two-thirds vote either establish the benefit district on the terms approved by the governing body or forgo its establishment. (Pub. Util. Code, § 33001.5, subds. (b) & (c).)

Relying on the rule that exemptions from special assessments "should . . . be based on express statutory authority" (*Hollywood Cemetery Assn. v. Powell* (1930) 210 Cal. 121, 135 [291 P. 397, 71 A.L.R. 310]), and that a presumption, founded on distributive equity, extends assessment to all those who are beneficially affected by the improvement absent affirmative indications supporting an exemption (*Cedars of Lebanon Hosp. v. County of L.A.* (1950) 35 Cal.2d 729, 747-748 [221 P.2d 31, 15 A.L.R.2d 1045]), interveners claim that the text of the statute fails to demonstrate the requisite clarity of legislative intent. The Court of Appeal agreed that the statute did not grant SCRTD any exemption power. We disagree and, for the reasons that follow, conclude that the exemption of residential property from the assessment districts at issue here is "based on express statutory authority." (*Hollywood Cemetery Assn. v. Powell, supra,* 210 Cal. 121, 135.)

Section 33001.5, subsection (b), expressly authorizes the city council of Los Angeles to "amend and approve, as amended . . . the geographic boundaries of the benefit district and the method of assessment." Although the term "method of assessment" is not defined, the Legislature previously has used this phrase to encompass the determination of the type of property upon which an assessment will be levied. (Stats. 1977, ch. 1218, §§ 3, 4, pp. 4101-4103, Deering's Wat. Uncod. Acts (1991 pocket supp.) Act 7150, §§ 13, 13.5, pp. 9-10.) Accordingly, we conclude that by using this phrase in section 33001.5, the Legislature authorized Los Angeles to amend the method of assessment by excluding residential properties from the assessment district. Our conclusion is butressed [sic]

by the fact that, in addition to receiving authorization to amend the method of assessment, the city was statutorily authorized to amend the geographic boundaries of the benefit district. It is clear, therefore, that the Legislature intended the city to have a significant voice in determining which properties would be subject to the special assessment.

Finally, subdivision (c) of section 33001.5 provides that once the city has acted, SCRTD must decide "whether to create the benefit district as approved by the [city]." The Legislature thus granted SCRTD authority to create the assessment district as amended by the city, including the exemption of residential properties from assessment.

Conclusion

Early in our history, the high court observed that "the science of government is . . . the science of experiment." (*Anderson v. Dunn* (1821) 19 U.S. [6 Wheat.] 204, 226 [5 L.Ed. 242, 247].) Not long ago, in upholding an innovation in the government of a county school system, the court reminded us that "[v]iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions." (*Sailors v. Board of Education* (1967) 387 U.S. 105, 110-111 [18 L.Ed.2d 650, 654-655, 87 S.Ct. 1549].) In the circumstances of this case, combining an old device with a new setting, we see "nothing in the Constitution to prevent experimentation." (*Id.* at p. 111 [18 L.Ed.2d at p. 655].)

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., Baxter, J., and George, J., concurred.

KENNARD, J. – I dissent.

The challenged electoral system, under which none but owners of commercial property may vote on the imposition of special benefit assessments to finance rail rapid transit stations, violates the equal protection guarantee of the Fourteenth Amendment of the United States Constitution. Because the construction of rapid transit stations is a matter of concern to all residents of the area surrounding the sites of the proposed stations, and because the burden of the assessments will be passed on to other members of the community in the form of higher rents and higher prices for goods and services, the right to vote on a financing mechanism for the stations may not be restricted to owners of commercial property. The contrary conclusion reached by the majority is based on a faulty analysis derived from a misreading of the applicable decisions of the United States Supreme Court.

I

The Legislature established the Southern California Rapid Transit District (hereafter the SCRTD) to construct, operate, and maintain "a comprehensive mass rapid transit system in the southern California area, and particularly in Los Angeles County." (Pub. Util. Code, § 30001, subd. (a).) The governing body of the SCRTD is its board of directors (hereafter the Board). (*Id.* § 30200.)

Recognizing that "rail rapid transit facilities and services provide special benefits to parcels of land, and

improvements thereon, in the vicinity of rail rapid transit stations" (Pub. Util. Code, § 33000, subd. (b)), the Legislature authorized the SCRTD to identify the area around each transit station that would be specially benefited by the station, to designate this area a benefit assessment district (or a zone within a benefit assessment district), and to levy special benefit assessments on property so designated (*id.*, §§ 33000, subd. (a), 33001). Imposition of the special benefit assessments is "for the purpose of financing, in whole or in part, the acquisition, construction, development, joint development, operation, maintenance, or repair of one or more rail transit stations and rail transit related facilities located within the benefit districts." (*Id.*, § 33001, subd. (a).) Revenue derived from a special benefit assessment, or from bonds secured by such assessment, may be used only for financing the facility for which it was levied. (*Id.*, § 33002, subd. (d).)

The Board may establish the benefit districts and impose the assessments without an election (Pub. Util. Code, § 33002.1) unless presented with a petition for election "signed by the owners of at least 25 percent of the assessed value of real property within the benefit district." (*Id.*, § 33002.2.) If a petition with the required signatures is presented, the SCRTD holds an election at which only owners of assessed property may vote and each such property owner "may cast one vote for each one thousand dollars ($1,000), or fraction thereof, worth of land or improvements owned by the voter in the benefit district as is shown on the most recent equalized assessment roll." (*Id.*, § 33002.3, subd. (b).)

Using its statutory authority, the Board established two benefit districts (one of which contains four zones)

consisting of land surrounding proposed rail rapid transit stations. Although the Legislature had not expressly authorized the exemption of residential property from assessment, such property was exempted and the Board levied the assessment only on commercial property. The lawsuit now before this court challenges the electoral features of the existing scheme, under which only owners of commercial property can petition for and vote in an election on the benefit assessments.

II

Under the Fourteenth Amendment to the federal Constitution, no state may "deny to any person within its jurisdiction the equal protection of the laws." In the context of state and local voting systems, this guarantee means that the government may not impose a voting restriction other than residence, age, or citizenship, *in elections of general interest,* unless it can demonstrate that the restriction is necessary to promote a compelling state interest. (*Hill v. Stone* (1975) 421 U.S. 289, 297 [44 L.Ed.2d 172, 178-179, 95 S.Ct. 1637].) The SCRTD does not contend that the voting restriction at issue here, which limits the franchise to owners of commercial property, can withstand this strict scrutiny. The primary question to be answered, therefore, is whether an election on the imposition of special benefit assessments to finance rail rapid transit stations is an election of general or special interest.

To support its conclusion that the restrictions at issue here are constitutionally permissible, the majority relies heavily on *Salyer Land Co. v. Tulare Water District* (1973) 410 U.S. 719 [35 L.Ed.2d 659, 93 S.Ct. 1224] (hereafter

Sayler), and *Ball v. James* (1981) 451 U.S. 355 [68 L.Ed.2d 150, 101 S.Ct. 1811] (hereafter *Ball*). As I will explain, these cases are of limited relevance because they concern elections to select representatives rather than, as here, elections to decide discrete issues. To the extent these cases are relevant, they support the conclusion that voting restrictions in elections conducted by the SCRTD are not exempt from strict scrutiny.

In *Sayler, supra,* 410 U.S. 719, and *Ball, supra,* 451 U.S. 355, the issue before the United States Supreme Court was the validity, under the Fourteenth Amendment's equal protection guarantee, of a law limiting to property owners the right to vote in elections of the governing body of a water district. In upholding the property ownership restrictions, the high court explained that a water district, in the discharge of its primary function, does not exercise traditional governmental powers. Noting that a water district exists to acquire, store, and distribute water, the court commented that the district at issue in *Sayler* provided "no other general public services such as schools, housing, *transportation,* utilities, roads, or anything else of the type ordinarily financed by a municipal body. . . . and it does not have a fire department, police, buses, or *trains.*" (*Sayler, supra,* at pp. 728-729 [35 L.Ed.2d at pp. 666-667], italics added.) Although the district at issue in *Ball* did provide a "general public service" by producing and distributing electrical power, this activity was merely incidental to its primary purpose and thus, the court concluded, the provision of this utility service could not change the district's character. (*Ball, supra,* at pp. 368-369 [68 L.Ed.2d at pp. 161-162].)

The United States Supreme Court also emphasized that the actions of water districts disproportionately affect landowners because district costs are assessed against landowners in proportion to the benefits received, with delinquencies becoming a lien on the land. (*Salyer, supra,* 410 U.S. 719, 729 [35 L.Ed.2d at p. 667].) Although the district at issue in *Ball* provided much of its water for nonagricultural uses, the court explained that the "constitutionally relevant fact" was that all of its water was distributed according to land ownership. (*Ball, supra,* 451 U.S. 355, 367 [68 L.Ed.2d at pp. 160-161].) The court concluded that the districts "remain essentially business enterprises, created by and chiefly benefiting a specific group of landowners." (*Id.* at p. 368 [68 L.Ed.2d at p. 161].)

The SCRTD's primary purpose and manner of operation contrast sharply with those of the water districts discussed in *Sayler, supra,* 410 U.S. 719, and *Ball, supra,* 451 U.S. 355. The SCRTD's primary purpose is to establish and operate an urban rail mass transit system. Providing urban mass transportation is a task traditionally performed by local government, as the United States Supreme Court recognized when it included transportation among the "general public services" that local governments have historically provided to their citizens. (*Sayler, supra,* at pp. 728-729 [35 L.Ed.2d at pp. 666-667]; see also, *Cunningham v. Municipality of Metropolitan Seattle* (W.D.Wash. 1990) 751 F.Supp. 885, 890 [applying one-person, one-vote principle to special district providing mass transit and water pollution abatement].)

If a public entity's primary purpose is to provide even a single traditional governmental service, the federal Constitution may require strict scrutiny of voting restrictions in elections of its governing body. (See, e.g., *Hadley v. Junior College District* (1970) 397 U.S. 50 [25 L.Ed.2d 45, 90 S.Ct. 791] [applying one-person, one-vote principle to election for school board members]; *Fumarolo v. Chicago Bd. of Educ.* (1990) 142 Ill.2d 54 [566 N.E.2d 1283, 1295].) The transportation service that the SCRTD provides is not distributed according to land ownership but is available to all who choose to ride its trains. Although the building of a rail mass transit system provides special benefits to some landowners, these benefits are incidental to the rapid transit district's primary purpose. The chief beneficiaries of the transit system are those who use it for transportation, a class unrelated to land ownership. Finally, only a small portion of the SCRTD's revenues will be derived from assessments on land. Its primary sources of funding are grants from the federal and state governments and the fares to be collected from transit patrons. Given these many significant differences between the SCRTD and the water districts considered by the United States Supreme Court in *Sayler, supra,* 410 U.S. 719, and *Ball, supra,* 451 U.S. 355, this case is not controlled by the decisions in those two cases.

The majority opinion does not analyze the issue in these terms. Instead of comparing the water districts at issue in *Sayler, supra,* 410 U.S. 719, and *Ball, supra,* 451 U.S. 355, with the SCRTD, the majority compares them with the benefit assessment districts. This is fundamentally erroneous, and indeed senseless, because the SCRTD itself, not the benefit districts, imposes and collects the

special benefit assessments and conducts any election that may be required. (Pub. Util. Code, § 33000 et seq.) Furthermore, although a rapid transit district and a benefit assessment district are both called "district," only one of them – the rapid transit district – exists as a legal entity. A benefit assessment district is merely a geographical area within the SCRTD's borders identified by the Board for the purpose of imposing the assessment. Such a "district" has no governing body, no employees, and no powers or responsibilities. It is not a public entity. (See *Dawson v. Town of Los Altos Hills* (1976) 16 Cal.3d 676, 683 [129 Cal.Rptr. 97, 547 P.2d 1377].) Because it is not a unit of government, a benefit assessment district, unlike the SCRTD itself, cannot be meaningfully compared to the water districts at issue in *Sayler* and *Ball*.

The conclusion to be drawn from *Sayler, supra*, 410 U.S. 719, and *Ball, supra*, 451 U.S. 355, is that the SCRTD is a governmental entity of general powers. If the election at issue were for the purpose of selecting the SCRTD's governing body, it would be an election of general interest and restrictions on the franchise other than residence, age, or citizenship would therefore be subject to strict scrutiny. (*Hill v. Stone, supra*, 421 U.S. 289, 297 [44 L.Ed.2d 172, 178-179].) But the scope of the election is narrower. Its purpose is to determine whether special benefit assessments shall be imposed. To decide whether such an election, conducted by a governmental entity of general powers, is an election of general interest, it is appropriate to consider decisions of the United States Supreme Court concerning similar limited-purpose elections.

As the high court has emphasized, the equal protection principles applicable to "an election involving the

choice of legislative representatives" have only "limited relevance" in determining the validity of restrictions on the franchise in a " 'single-shot' referendum." (*Lockport v. citizens for Community Action* (1977) 430 U.S. 259, 266 [51 L.Ed.2d 313, 321, 97 S.Ct. 1047].) Unlike an election of legislative representatives, a referendum "puts one discrete issue to the voters," and the proposal can be analyzed "to determine whether its adoption or rejection will have a disproportionate impact on an identifiable group of voters." (*Ibid.*) If adoption or rejection of the proposal that is the subject of the referendum would have such a disproportionate impact, "the question then is whether a State can recognize that impact either by limiting the franchise to those voters specially affected or by giving their votes a special weight." (*Ibid.*)

Here, it cannot be questioned that the decision to impose a special benefit assessment will have a particular impact on an identifiable group of voters – owners of the property on which the assessment is imposed. But the existence of this special impact is not in itself sufficient to justify restriction of the franchise to the class specially affected in this manner. The relevant analysis is found in another United States Supreme Court decision, *Phoenix v. Kolodziejski* (1970) 399 U.S. 204 [26 L.Ed.2d 523, 90 S.Ct. 1990] (hereafter *Phoenix*).

The high court held in *Phoenix, supra,* 399 U.S. 204, that in an election to approve a municipality's issuance of general obligation bonds, a state could not restrict the franchise to real property taxpayers, even though the municipality substantially relied on property taxes to service the bonds. The court concluded that "[t]he differences between the interests of property owners and the

interests of nonproperty owners are not sufficiently substantial to justify excluding the latter from the franchise." *Id.* at p. 209 [26 L.Ed.2d at p. 527].)

The court gave three reasons for this conclusion. First, all municipal residents had a substantial interest in the facilities and services financed by the bonds. "Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise." (*Phoenix, supra,* 399 U.S. 204, 209 [26 L.Ed.2d at p. 527].) Second, the municipality would not rely entirely on property taxes to service the bond debt, but would also rely in significant part on other local taxes paid by nonproperty owners. (*Id.* at pp. 209-210 [26 L.Ed.2d at pp. 527-528].) Finally, the landowners could redistribute the property tax burden to others in the community in the form of higher rents and, in the case of commercial property, in the form of higher prices for goods and services produced or sold on the taxed property. (*Id.* at pp. 210-211 [26 L.Ed.2d at pp. 528-529].)

This analysis compels a similar conclusion here. As the United States Supreme Court recognized, a vote on a revenue measure cannot be divorced from the facilities and services to be financed by the revenue. Here, the issue addressed by the special benefit assessment election is not just the imposition of the assessment, but also the construction of the mass transit stations that the assessments will finance. The stations will generate an increase in commercial activity in the areas around the stations, as the majority acknowledges. This increase in commercial activity will make the areas more attractive for certain

kinds of high volume businesses (e.g., fast-food outlets), and less attractive for other, more neighborhood-oriented businesses (e.g., laundromats). Inevitably, all residents of the benefit assessment area, not just the owners of commercial property, will be affected in important ways by the change in the commercial environment resulting from the location of the transit station.

The effects will not be confined to commercial activity. In most instances, residential property located near proposed rapid transit stations will increase in value in recognition of the convenience of ready access to the transit system.[1] This increase in value will translate into higher rents for rented dwellings and higher sales prices for owner-occupied dwellings. These increases in housing costs will significantly affect the residents of the area immediately surrounding the proposed stations.

Because the construction of the transit stations affects all community residents in important ways, the exclusion of residents who own no commercial land is presumptively a violation of equal protection. Although the assessments will be levied initially on the owners of commercial property, they can redistribute the burden to other community residents. Rents charged to commercial tenants will certainly increase. Indeed, it is undisputed

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[1] There may be situations in which a rapid transit station would depress the value of adjacent residential property. For instance, this could occur in the unlikely event that the station were to be located in a neighborhood of expensive single-family residences. For present purposes, the essential point is that construction of a rapid transit station is virtually certain to have some effect, either positive or negative, on the value of nearby residential property.

that most commercial leases in the benefit assessment areas contain "pass through" provisions under which the tenant assumes liability for any tax or assessment levied on the property. The occupant of the premises who pays the assessment, whether landowner or tenant, can recover the cost from consumers, many of whom will be local residents, by increases in the prices of goods and services produced or sold on the taxed property.

Under the test articulated in *Phoenix, supra,* 399 U.S. 204, which this court is required to employ, the election on the SCRTD's special benefit assessments is an election of general interest, in which restrictions other than residence, age, and citizenship must be subjected to strict scrutiny. The restriction imposed, which limits the franchise to owners of commercial property, concededly cannot withstand such scrutiny. Accordingly, the existing system for the SCRTD special benefit assessment elections, by disenfranchising all but owners of commercial property subject to assessment, violates the equal protection guarantee of the Fourteenth Amendment to the United States Constitution.

III

Like the other members of this court, I am reluctant to accept a conclusion that might impede the construction of needed public facilities, and the need for a modern and efficient rapid transit system in the greater Los Angeles area cannot be denied. Yet, as the United States Supreme Court has noted, restrictions on the franchise that violate equal protection cannot be justified "on exigencies of history or convenience." (*New York City Bd. of Estimate v.*

Morris (1989) 489 U.S. 688, 703, fn. 10 [103 L.Ed.2d 717, 733, 109 S.Ct. 1433].) Thus, like the Court of Appeal, I conclude that, under controlling federal precedent, the existing electoral system for the SCRTD's special benefit assessments is invalid on its face.

Because the electoral system is invalid for the reasons I have stated, I find it unnecessary to consider the other bases on which that system has been challenged in this litigation. Having concluded that the existing electoral system violates the federal Constitution, I would affirm the judgment of the Court of Appeal.

Mosk, J., concurred.

[No. B032265, Second Dist., Div. Two. May 1, 1990.]

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, Plaintiff and Respondent, v.

HELEN M. BOLEN, Defendant and Appellant;

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al., Interveners and Appellants.

COUNSEL

Marilyn L. Garcia, Brobeck, Phleger & Harrison, John J. Wasilczyk and Earle Miller for Defendant and Appellant.

Hill, Farrer & Burrill, William M. Bitting, Kevin H. Brogan and Dean E. Dennis for Interveners and Appellants.

Bird, Marella, Boxer, Wolpert & Matz, Vincent J. Marella, Dorothy Wolpert and Mark T. Drooks for Plaintiff and Respondent.

OPINION

COMPTON, J. – The Southern California Rapid Transit District (SCRTD) initiated this action to validate two special benefit assessment districts created to fund a portion of the cost of the first 4.4-mile segment of the Los Angeles Metro Rail rapid transit system. Revenue collected from these districts eventually will be used to repay bonds the SCRTD intends to sell pursuant to resolutions adopted by its board of directors (Board). Helen Bolen, the secretary of the SCRTD, refused, however, to certify those resolutions on the ground that the statutory scheme (Pub. Util. Code, § 33000 et seq.) authorizing the creation of the

districts was constitutionally infirm and that, in any event, the Board had not complied with the law in imposing the assessments. Several corporations and individuals who own or lease real property located within the assessment districts subsequently intervened in the action.

After finding that the districts had been validly created and that there was no other impediment to the issuance of the bonds, the trial court granted a writ of mandate directing Bolen to certify the Board's resolutions. This appeal follows.[1] We reverse.

The facts giving rise to this litigation are not in dispute. The SCRTD is a rapid transit district created in 1964 by the California Legislature pursuant to Public Utilities Code sections 30100 and 30101.[2] Connecting four counties and servicing some eighty cities in Los Angeles County alone, the SCRTD has virtual autonomy in self-governance, limited only by the regulations of the Public Utilities Commission. (*Los Angeles Met. Transit Authority v. Public Util. Com.* (1963) 59 Cal.2d 863, 868-869 [31 Cal.Rptr. 463, 382 P.2d 583]; *Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist.* (1986) 185 Cal.App.3d 996, 1000 [230 Cal.Rptr. 225].) Formed both as a public agency and a public corporation (§§ 30007 and 30101), it has its own board of directors, with powers to make contracts, employ a police force, acquire and construct rights of ways, rail lines, incur indebtedness, exercise

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[1] Named as appellants on this appeal are Bolen, in her capacity as secretary of the SCRTD, and interveners, The Atchison, Topeka and Santa Fe Railway Company et al.

[2] All further statutory references are to the Public Utilities Code unless otherwise indicated.

eminent domain, and levy and collect taxes. (§§ 30005, 30200, 30502, 30503, 30504, 30530, and 30701.) The declared purpose of the SCRTD is to create "a comprehensive mass rapid transit system in the southern California area, and particularly in Los Angeles County" that will lessen traffic congestion and "foster the development of trade and the movement of people in and around the Los Angeles area for the benefit of the entire state." (§ 30001, subd. (a).)

In keeping with its statutory mandate, the SCRTD, in 1979, proposed the construction of Metro Rail, a 18.6-mile subway line between downtown Los Angeles and North Hollywood. To finance the project's multibillion dollar cost, the transit district sought funding from a variety of sources, including the Urban Mass Transit Administration (UMTA), an agency of the federal government. Initially, UMTA committed its financial support. A change in federal policy and a concomitant reduction in available funds, however, later forced it to withdraw from the project. In hopes of securing at least some federal funding the SCRTD proposed an alternative plan, designated MOS-1 for Minimum Operable Segment-1, consisting of the first 4.4 miles of the 18.6-mile system extending from Union Station in downtown Los Angeles to Wilshire and Alvarado Boulevards on the outskirts of the central business district.[3] The SCRTD estimated the cost of that

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[3] As planned, the complete trip from Union Station to Wilshire and Alvarado will take approximately seven minutes with stops at the Los Angeles Civic Center, Fifth and Hill Streets, and Seventh and Flower Streets. Today, that same trip takes one-half hour by automobile at peak hours of travel.

project at $1.25 billion. After determining that the plan would provide "a viable contribution to the greater Los Angeles urban transportation infrastructure," the UMTA signed a full funding contract with the SCRTD, agreeing to release an initial $225 million for the construction of MOS-1.

Although federal grants under the Urban Mass Transportation Act of 1964 eventually will total in excess of $695 million, receipt of those funds is conditioned on the availability of nonfederal financing from the state, other local governmental entities, and the private sector.

The State of California, through the California Transportation Commission, has committed $214 million over a period of seven years as its portion of the funding for MOS-1 and Los Angeles County, through its transportation commission, has pledged $177 million. The City of Los Angeles will contribute $34 million to the project, with the remainder of the cost, approximately $130 million, to be derived from the planned issuance of tax exempt bonds secured by special benefit assessments on certain real property located along the route of the system.

In 1983, the state Legislature enacted a series of amendments to the Public Utilities Code, commencing with section 33000, that authorized the SCRTD to form special benefit assessment districts in the vicinities of proposed rail stations.[4] Under this legislation, the SCRTD

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[4] Similar legislation, enacted in 1968 as the "Mills Act" (§ 99000 et seq.), granted rapid transit districts throughout the

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Board may, after conducting public hearings, estimate the benefit to a district from the operations of the local stations, levy assessments in proportion to those benefits, and issue bonds repayable through the special assessments.

Section 33000, subdivision (b) provides in pertinent part that the Board is "the conclusive judge of the proportion of special and general benefits produced by the facilities and of the distribution of the special benefits among parcels of property within the benefit assessment district." Moreover, section 33002 declares in no uncertain terms that the special assessments imposed on real property within a district do not "constitute ad valorem taxes or any other form of general tax levy. . . ."

The sole means to protest the formation of a special assessment district is by referendum election. Property owners are entitled to an election only if they file a petition, signed by owners of at least 25 percent of the assessed value of real property within the district, not later than 30 days after the conclusion of the SCRTD's public hearings on the issue. (§§ 33002.2, 33002.5) The only voters who may participate in that election are the owners of real property subject to the assessment.

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state the authority to form special assessment districts in the vicinity of transit stations for the purpose of funding any bonded indebtedness. To our knowledge, however, these provisions never have been utilized.

The Mills Act and the special assessment law at issue in this case appear to be the first transit funding mechanism of their kind in the United States.

(§ 33002.3.) Each voter may cast one vote for each $1,000 worth of land and improvements owned by the voter according to the most recent equalized assessment roll. (§ 33002.3.) The Board may levy the assessment only if the majority of votes cast in the election approves of the district. (§ 33002.8.)

Beginning in 1984, the SCRTD undertook to establish two special assessment districts in the central business area of Los Angeles to finance a portion of the cost of MOS-1. In July 1984, the Board appointed a benefit assessment policy task force (BATF) to develop recommendations for structuring the district and implementing the assessment. The BATF, composed of community leaders and various representatives from the proposed districts, submitted its initial recommendations to the Board in December 1985. The study essentially found that the property within the recommended district boundaries would benefit from the operation of the planned MOS-1 stations through increased land values, lease rates, occupancy levels, retail sales, visitor access, reduced parking costs, and the ability to develop land more intensively. The BATF also found that all of these benefits were attributable to increased pedestrian traffic, and thus, principally confined to areas within walking distance of the transit stations.

In December 1984, the SCRTD Board adopted a resolution which, in accordance with the BATF's recommendations, proposed the creation of two special assessment districts, one covering real property within one-half mile of the four Metro Rail Stations to be located in the central business area, and one covering real property within one-

third mile of the Wilshire Alvarado station. The resolution further proposed to exempt residential uses, as well as certain classes of tax exempt property, and to impose initial assessment rates from $.28 per square foot graduating to $.40 as a maximum rate.

As required under section 33001.5, the Board conducted a public hearing on the proposal and, in February 1985, passed a resolution to proceed with the formation of the districts. The resolution also increased the initial rate of the assessment to $.30 per square foot of the greater of land or improvements, set the maximum rate at $.42 per square foot, and provided that the assessments would terminate in the year 2008 or earlier. Under this plan, all property subject to assessment within the districts would be assessed at the same rate, regardless of its current use, zoning classifications, value or distance from the Metro Rail stations.[5]

In accordance with the procedures set forth in section 33001.5, subdivision (b), the Board submitted the resolution to the Los Angeles City Council for approval, modification, or disapproval. After conducting a public hearing on the issue in May 1985, the council approved

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[5] The resolution provided that the assessment rates would be applicable to all "assessable" parcels and improvements in the districts. "Assessable improvements" were defined as improvements used for office, hotel, motel, commercial and retail purposes. All parcels are "assessable" unless specifically exempt. The resolution exempted three types of property from the assessment: property used for residential purposes (other than hotels and motels), property that is both publicly owned and used for a public purpose, and property that is both owned and used by specified nonprofit organizations.

the plan, subject to the condition that *all residential property within the districts be exempt from the assessment*,[6] and returned the matter to the SCRTD for final approval or rejection. (§ 33001.5, subd. (b).) In July 1985, the Board passed a resolution creating special assessment districts A-1 (the central business district) and A-2 (Wilshire/Alvarado) and placing a limit on total assessments from the two districts of $130.3 million plus administrative expenses. One year later, in August 1986, the Board instructed the general manager of the SCRTD to levy the assessments at the uniform rate of $.30 per square foot. Assessment bills were sent to commercial property owners within the districts in October and November 1986. The Board, however, later elected to defer collection of the assessments until 1992.

Following a public hearing in May 1987, the Board adopted two resolutions authorizing the sale of revenue

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[6] This condition apparently was mandated by section 427 of the Los Angeles City Charter, which provides in pertinent part as follows:

" . . .

"(b) Neither the City Council nor any City board, commission, officer or employee in the exercise of any power or authority it may have shall authorize or approve any grant of funds for a rail transit project unless the district, agency or entity proposing to initiate or implement the project has first entered into a contract with the City which binds the district, agency or entity (1) to not levy any assessments on any property in residential use or under construction prior to April 9, 1985, . . . and (2) to pay or fully refund to the payers thereof any assessments required by law to be levied thereon."

bonds in an amount up to $200 million.[7] Bolen, in her capacity as secretary of the SCRTD, refused to certify the vote on these resolutions as required by law, contending that the assessment scheme did not meet constitutional standards, that there was no special benefit to the properties within the districts, and that the SCRTD had failed to comply with various statutory requirements.

In response, the SCRTD sought a writ of mandate in superior court to compel Bolen to certify the resolutions and thus allow the sale of the bonds to proceed. By stipulation of the parties, interveners subsequently joined the action also to contest the formation of the districts and the imposition of the assessments. After a lengthy hearing, the trial court rejected each of the arguments advanced by Bolen and interveners and issued the writ.

On this appeal, the parties advance numerous arguments in opposition to and in support of the constitutionality of the statutory scheme authorizing the creation of assessment districts. Both Bolen and interveners (appellants) maintain that they are not opposed to Metro Rail, but merely the manner in which the assessments have been formulated and levied solely on the commercial property owners within the districts. The SCRTD counters that the assessments have been fairly imposed on those who will benefit the most from the project and that every effort has been made to include both the property owners and the public at large in the decision-making process.

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[7] The issuance of district A-1 and district A-2 bonds was not to exceed $187 million and $13 million, respectively.

The transit district asserts that the attack on the assessment districts is nothing more than a thinly disguised political assault on the legislative determination to construct Metro Rail in the first instance.

Despite these differences, the parties seem to agree on the importance of the issues raised by these proceedings, especially in terms of their impact on the future of the project as a whole. The SCRTD suggests, not too subtly, that without the monies made available by the imposition of the assessments the federal government will withdraw its participation, thus leading to the project's ultimate demise for lack of adequate funding.

In reviewing these issues, we think it important to emphasize at the outset that we do not consider or weigh the economic or social wisdom or general propriety of the statutory scheme enacted by the Legislature, or of the decision to construct Metro Rail in the first instance. Our sole function is to evaluate the legislation in light of established constitutional standards. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 816 [258 Cal.Rptr. 161, 771 P.2d 1247]; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 219 [149 Cal.Rptr. 239, 583 P.2d 1281].)

The first of the constitutional challenges raised here is directed at the petition and election procedures mandated by section 33002.2 et seq. Appellants contend that these procedures violate the equal protection clauses of both the state and federal Constitutions by invidiously discriminating against those who do not own property within the districts but are nonetheless affected by the

construction of a large-scale mass transportation project such as Metro Rail.

In support of their argument, appellants point out that although such groups as commercial tenants will bear the brunt of the assessments because of standard "pass through" clauses in their lease agreements, they are given no voice in the decisionmaking process. The same is said to be true of other residents, both within and without the districts, who will be impacted by the project but are denied the right to vote.[8]

Appellants further contend that there is a denial of equal protection because of the discriminatory manner in which the statutory scheme distinguishes between the allocation of votes and the amount of an assessment.

Section 33002.3, subdivision (b) allocates voting strength based upon the value of the property so that "each voter . . . may cast one vote for each one thousand dollars ($1,000), or fraction thereof, worth of land or improvements owned by the voter . . . as is shown on the most recent equalized assessment roll." At the same time, however, assessments are calculated on the basis of parcel size or floor area. (§ 33002, subd.(a).)[9]

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[8] Section 33002.3, subdivision (a) defines "voter" as "an owner of real property which is assessed or proposed to be assessed under this chapter and which is within the boundaries of the benefit district."

[9] Section 33002, subdivision (a) provides: "In determining the amount of a special benefit assessment, the board may measure the benefit to real property in the benefit district or zones therein by the parcel area of unimproved real property

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Appellants insist that this classification scheme is flawed because property owners with the most votes do not necessarily pay the highest assessments. The absence of any relationship between votes awarded and the assessment paid is made more onerous, at least according to appellants, because under article XIII A of the California Constitution (i.e., Proposition 13) there is no longer any correlation between market value and assessed value. As a result, the statutory scheme purportedly awards more votes to many properties less valuable than others, but more recently reassessed.

In reviewing these claims, we start with the proposition that the federal Constitution grants the states "broad powers to determine the conditions under which the right of suffrage may be exercised." (*Lassiter v. Northampton Election Bd.* (1959) 360 U.S. 45, 50 [3 L.Ed.2d 1072, 1076, 79 S.Ct. 985].) But "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." (*Harper v. Virginia Bd. of Elections* (1966) 383 U.S. 663, 665 [16 L.Ed.2d 169, 171, 86 S.Ct. 1079].)

When a state excludes citizens from the electorate, it generally must justify the exclusion under the harsh "compelling state interest" test. (*Hadley v. Junior College District* (1970) 397 U.S. 50, 59 [25 L.Ed.2d 45, 52-53, 90 S.Ct. 791]; *Choudhry v. Free* (1976) 17 Cal.3d 660, 664 [131

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and by the parcel area and the floor area of real property and improvements thereto of improved real property, as deemed appropriate by a resolution adopted by a two-thirds vote of the members of the board."

Cal.Rptr. 654, 552 P.2d 438].) Under that standard, the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose. (*Curtis v. Board of Supervisors* (1972) 7 Cal.3d 942 [104 Cal.Rptr. 297, 501 P.2d 537]; see also *Serrano v. Priest* (1971) 5 Cal.3d 584, 597 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487].)

Although not every legislative voting classification is subject to strict scrutiny, the compelling interest test must be applied if a classification has a " 'real and appreciable impact' upon the equality, fairness and integrity of the electoral process." (*Choudhry v. Free, supra,* 17 Cal.3d at p. 664, citing *Bullock v. Carter* (1972) 405 U.S. 134, 144 [31 L.Ed.2d 92, 100, 92 S.Ct. 849].)

Applying the strict scrutiny standard, the United States Supreme Court has invalidated requirements of property ownership for voters in a school district election (*Kramer v. Union School District* (1969) 395 U.S. 621, 632 [23 L.Ed.2d 583, 592-593, 89 S.Ct. 1886]),[10] as well as

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[10] In *Kramer,* the court considered a voter qualification statute that limited eligibility to vote in local school board elections to owners or lessees of taxable real property within the district, or their spouses, and to parents or guardians with children enrolled in a district school. The district argued that the state had a legitimate interest in limiting the district elections to those "primarily interested" in such elections," [sic] and that it could "reasonably and permissibly" conclude that property taxpayers and parents of school children were those who were primarily interested. The court held that even if such a

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elections to approve the issuance of bonds for the construction of a city library (*Hill v. Stone* (1975) 421 U.S. 289, 297 [44 L.Ed.2d 172, 178-179, 95 S.Ct. 1637]), revenue bonds for the use of a municipal utility district (*Cipriano v. City of Houma* (1969) 395 U.S. 701, 705-706 [23 L.Ed.2d 647, 651-652, 89 S.Ct. 1897]),[11] and general obligation bonds to finance municipal improvements (*Phoenix v.*

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purpose was constitutionally legitimate, the statute's system of classification was not precisely tailored to accomplish it. The classification was over-inclusive in that it included many persons tangentially interested in school affairs and under-inclusive in that it excluded many persons with a substantial interest in decisions affecting education. In so concluding, the court made it clear that the fact that the district was financed by revenue derived from a property tax did not mean that the impact of the assessment ultimately affected only property owners or lessees.

[11] In *Cipriano,* the court extended its *Kramer* analysis to a Louisiana statute which allowed only landowners to vote in a revenue bond election called to finance the operations of a city's utility system. As in *Kramer,* the city argued that property owners held a " 'special pecuniary interest' in the election, because the efficiency of the utility system directly affect[ed] 'property and property values' and thus 'the basic security of their investment in [their] property [was] at stake.' " (*Id.* at p. 704 [23 L.Ed.2d at p. 651].) Without deciding whether or not the franchise could be restricted to those "primarily interested," the court found that the statutory scheme did not fulfill the city's articulated goal since those excluded had as much interest in the outcome of the election as those the statute included. This conclusion was based on the fact that both property owners and nonproperty owners used the services of the utility, paid for its operations, and benefited by the projects financed by its revenues.

Kolodziejski (1970) 399 U.S. 204 [26 L.Ed.2d 523, 90 S.Ct. 1990]).[12]

The California Supreme Court has applied a similar standard in striking down statutes which allowed only landowners to vote on local governmental measures. (See *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779 [187 Cal.Rptr. 398, 654 P.2d 168]; *Choudhry v. Free, supra,* 17 Cal.3d 660; *Curtis v. Board of Supervisors, supra,* 7 Cal.3d 942; *Burrey v. Embarcadero Mun. Improvement Dist.* (1971) 5 Cal.3d 671 [97 Cal.Rptr. 203, 488 P.2d 395].)

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[12] In *Kolodziejski,* the court invalidated an Arizona constitutional and statutory scheme which permitted only real property taxpayers to vote on the issuance of municipal general obligation bonds. Unlike *Cipriano,* where the bonds and the interest were to be paid wholly by the revenues of the facility being financed, in *Kolodziejski* property tax revenues were to be used to repay the bonded indebtedness and interest on such indebtedness. The city asserted that a special burden had been placed on property taxpayers for the benefit of the entire community, and that this burden was unsharable and unshiftable, resulting in the equivalent of a lien on all real property within the city. While acknowledging that the interests of property owners were somewhat different from the interests of nonproperty owners, the Supreme Court found that the interests of nonproperty owners were not substantially less than those included within the grant of the franchise. It pointed out that all residents of the city, property owners and nonproperty owners alike, had an interest in the services and facilities financed by the bonds and would be "substantially affected by the ultimate outcome of the bond election. . . . " (*Id.* at p. 209 [26 L.Ed.2d at p. 527].) Based upon this analysis, the court held that "[p]lacing such power in property owners alone can be justified only by some overriding interest of those owners that the State is entitled to recognize." (*Ibid.*)

The fundamental principle expressed in these decisions is that where a governmental decision subject to a referendum will have a substantial impact on all citizens, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless supported by a compelling state interest.

As the court observed in *Phoenix v. Kolodziejski, supra,* 399 U.S. at page 209 [26 L.Ed.2d at page 527], "when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise." In applying this rule, the court has held "that all voters have an important interest in the benefits of adequate service and favorable rates of a utility district (*Cipriano*), that both property owners and those who do not own property are called upon either directly or indirectly to pay for the improvements acquired from the proceeds of bonds (*Phoenix, Hill*), and that those who do not own property may have as direct an interest in school affairs (*Kramer*) or in a library (*Hill*) as those who do." (*Choudhry v. Free, supra,* 17 Cal.3d 660, 666.)

In a line of cases beginning with *Salyer Land Co. v. Tulare Water Dist.* (1973) 410 U.S. 719 [35 L.Ed.2d 659, 93 S.Ct. 1224], however, the court carved out an exception to the strict scrutiny requirement and upheld property qualifications for voters in certain "special purpose" districts. (See also *Ball v. James* (1981) 451 U.S. 355 [68 L.Ed.2d 150, 101 S.Ct. 1811]; *Associated Enterprises, Inc. v. Toltec Watershed Improvement District* (1973) 410 U.S. 743 [35 L.Ed.2d 675, 93 S.Ct. 1237].) Because these decisions are the only

ones which permit this type of voter restriction, the arguments of the parties here focus largely on the applicability of *Salyer* and its progeny to the case before us.

The plaintiffs in *Salyer* challenged the voting scheme for the governing board of a California water storage district that extended the franchise only to landowners, with votes apportioned according to the assessed valuation of the land owned. The Supreme Court, after examining the nature of the services performed by the district, concluded that "by reason of its special limited purpose and of the disproportionate effect of its activities on landowners as a group" (410 U.S. at p. 728 [35 L.Ed.2d at p. 666]), the strict one person, one vote equal protection analysis advanced in *Kramer* and its progeny did not apply.

Critical to an understanding of *Salyer* is the factual setting of the case. The water district consisted of 193,000 acres, all of it agricultural land, 85 percent farmed by 1 or another of 4 corporations. It had a total population of 77 residents, 18 of whom were children. Assessments against landowners were the sole means of paying expenses of the district, so that landowners as a class bore the entire financial burden. Moreover, the reason for the district's existence and continued operation was to provide water for farming, and, as stressed by the court, the primary effect of its operations was upon agricultural lands. Although the district had the authority to undertake certain flood control activities, the court found these powers were incident to the exercise of its primary functions of water storage and distribution. The court specifically noted that the district provided "no other general public services such as schools, housing, transportation, utilities,

roads, or anything else of the type ordinarily financed by a municipal body." (*Salyer Land Co. v. Tulare Water Dist., supra,* 410 U.S. at pp. 728-729 [35 L.Ed.2d at pp. 666-667].)

Based on its "limited purpose" and the "disproportionate effect" of district operations on landowners, the *Salyer* court found it understandable that the "statutory framework for election of directors . . . focuse[d] on the land benefited, rather than on people as such." (*Ibid.*)

Tracing the development of equal protection analysis of apportionment and voter qualifications in local elections, the court observed that in cases invoking the rigid one person, one vote standard, the local entities there involved exercised "general governmental powers" or performed "important governmental functions." (*Id.* at p. 727 [35 L.Ed.2d at p. 666].)

By distinguishing the water storage district from the governmental entities involved in *Kramer* and its progeny, the court explicitly denied the applicability of a strict standard of review and relied solely upon the less stringent rational relation test to uphold the voting scheme. In its search for a rational justification for the disenfranchisement of lessees and other residents, the court found several reasons, including the need to attract landowner support for the formation and operation of the district, the avoidance of possible ballot manipulation, and problems of voting administration.[13]

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[13] The Supreme Court reaffirmed its position in *Ball v. James, supra,* 451 U.S. 355, which upheld an Arizona state law permitting only landowners to vote for directors of a water

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Unlike *Salyer,* the case before us involves a matter of substantial interest to property owners and nonproperty owners alike. It is beyond question that the development of a mass rapid transit system is crucial to the orderly and efficient growth of any metropolitan area. This is particularly true in Los Angeles where the dreams of elevated monorails and underground subways have eluded municipal planners for decades. Once described as "six suburbs in search of a city," Los Angeles today is a vast megalopolis encircled by a web of crowded city streets and congested freeways.

Given the dramatic growth of the area in recent years, it is no wonder that the establishment of an integrated mass transit system has taken on so much importance. In recognition of the need for expanded transportation services that can assume part of the load of the private automobile, existing bus lines, and proliferating freeways, the SCRTD proposed metro rail [sic].

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storage and distribution district. As in *Salyer,* the court found that the district did not exercise crucial government powers. Moreover, the district's water functions, which constituted the primary and originating purpose of the district, were held to be narrow.

California courts have applied a similar analysis to elections concerning a recreation and park district (*Simi Valley Recreation & Park Dist. v. Local Agency Formation Com.* (1975) 51 Cal.App.3d 648 [124 Cal.Rptr. 635]), a reclamation district (*Philippart v. Hotchkiss Tract Reclamation Dist.* 799 (1976) 54 Cal.App.3d 797 [127 Cal.Rptr. 42]), and a small irrigation district (*Schindler v. Palo Verde Irrigation Dist.* (1969) 1 Cal.App.3d 831 [82 Cal.Rptr. 61]).

Whether that project will fulfill the promise of its promoters is a question open to considerable debate. Be that as it may, there can be little doubt but that its financing, construction and operation will impact all segments of the population.

As we see it, public transportation, like public education, is an issue affecting all citizens. (Cf. *Kramer v. Union School District, supra,* 395 U.S. 621.) The Legislature itself recognized the statewide importance of the metro rail [sic] project, proclaiming that it is "in the best interest of the citizens of the state to authorize the Southern California Rapid Transit District to levy special benefit assessments for needed public rail rapid transit facilities and services." (§ 33000.) "There is an imperative need," the statute declares, "for a comprehensive mass rapid transit system in the Southern California area, and particularly Los Angeles County." (*Ibid.*)

Viewed in light of these legislative expressions of intent, we think it clear that the issues raised here involve the basic governmental function of providing mass transportation and affect all who live, work, and visit the area.

These concerns are substantially different from the ones which led the court in *Salyer* to uphold an election scheme which impacted only one segment of a "special" water storage district.

Nonlandowners share an equal interest with landowners in the creation of a mass transit system that, when completed, will stretch some 19 miles and link together such diverse areas as downtown Los Angeles and the San Fernando Valley. The nonproperty owning residents of the MOS-1 districts are no less interested in the results of

an election called to validate the assessments imposed by the SCRTD than were the voters whose exclusion from the franchise was invalidated in *Kramer, Cipriano,* and *Kolodziejski.*

If a voter who does not own property cannot constitutionally be excluded from voting on bonds to be used by a municipal utility district (*Cipriano*) or on city general obligations bonds (*Kolodziejski*) a fortiori, he may not be deprived of the right to petition for and vote in an election to authorize the formation of a special assessment district, the revenue of which will be used to partially finance the construction of a mass transit system.

This is especially true since the ultimate social and economic cost of the MOS-1 project falls on property owners and nonproperty owners alike. The funding of Metro Rail has substantial implications throughout the community, not just among the property owners of the assessment districts.

On this point, we agree with one commentator who has observed: "Because a special assessment will not finance the entire cost of a rapid transit system, part of the financing burden is likely to fall on nonlandowning persons inside the assessment district in the form of general property taxes, sales taxes and similar measures. In addition to this financing burden, nonlandowners within the district will have an interest in the proposed transit system's impact on their neighborhood from an economic and aesthetic perspective. In sum, excluding nonlandowner special district residents from voting on the rapid transit assessment proposal appears to exclude persons with a sufficient constitutional interest in the

election to merit the franchise." (Notes, *Rapid Transit Financing: Use of the Special Assessment* (1977) 29 Stan.L.Rev. 795, 809-810.)

According to the SCRTD, however, the state is justified in recognizing the unique interests of real property owners in the districts because they alone bear the burden of the special assessments. This is true, we are told, because unlike the general obligation bonds in *Kolodziejski* or the revenue bonds in *Cipriano*, a failure to pay the special assessment creates a lien on the property within the districts (§ 33017). We must disagree.

In *Kolodziejski*, the Supreme Court set forth three reasons why nonproperty owners were as substantially interested as property owners in the city's issuance of general obligation bonds. The court first pointed out that, regardless of how the debt on the bonds was serviced, nonproperty owners were significantly affected. If the bonds were to be serviced out of the city's general revenues, all taxpayers would share the burdens. And, even if the debt were to be totally serviced by property tax revenues, the court found that "a significant part of the ultimate burden of each year's tax on rental property will very likely be borne by the tenant rather than the landlord since . . . the landlord will treat the property tax as a business expense and normally will be able to pass all or a large part of this cost on to the tenants in the form of higher rent." (*Phoenix v. Kolodziejski, supra*, 399 U.S. 204, 210 [26 L.Ed.2d at p. 528].) Second, the court noted that any adverse effect caused by higher property taxes would be offset, at least in substantial part, by the increase in property values resulting from the improvements financed by the tax itself. On this point, the court further

stressed that "the price of real estate appears to be more a function of the health of the local economy than a reflection of the level of property taxes imposed to finance municipal improvements." (*Id.* at p. 212 [26 L.Ed.2d at p. 529].) Third, the court found that, short of a total collapse of the city's economy, there was no foreseeable way in which the bond obligation could become an unshiftable burden resulting in the forfeiture of property.

All three factors which influenced the court in *Kolodziejski* to require participation among property owners and nonproperty owners, are present in the special assessment election at issue here. The record in the instant case makes it clear that the actual burden of paying the assessments imposed by the SCRTD will, to a great extent, be borne by commercial tenants by virtue of "pass-through" clauses in their leases.

Moreover, any adverse effects caused by the imposition of the assessment will be offset by a concomitant increase in property values caused by the construction of the MOS-1 project itself. Indeed, the very definition of the term "special assessment" presupposes that there will be some benefit accruing to property because of a public improvement project.[14] Although a lien may be imposed for nonpayment of the assessment in the MOS-1 districts, the probability of property owners actually losing their

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[14] A special assessment is commonly defined as "a charge imposed on particular real property for a local public improvement of direct benefit to that property." (*Solvang Mun. Improvement Dist. v. Board of Supervisors* (1980) 112 Cal.App.3d 545, 552 [169 Cal.Rptr. 391].)

property is too insubstantial to justify the statutory distinction between property and nonproperty owners. (See Gaines, *The Right Of Non-Property Owners to Participate in a Special Assessment Majority Protest* (1972-73) 20 UCLA L.Rev. 201, 230-232.)

Viewed in light of these considerations, we are convinced that the benefits and burdens of the SCRTD's assessment fall indiscriminately on property owner and nonproperty owner alike. As a result, there is no basis for concluding that nonproperty owners are substantially less interested in an election called to validate the assessment districts than are property owners.

Next, the SCRTD justifies the distinction drawn by the statutory scheme between votes awarded and assessment paid primarily on the basis of administrative convenience. It argues that had the Legislature not used a vote allocation scheme based on assessed value, it would have been forced to allocate a single vote to each property owner irrespective of the value or size of the property being assessed. This, it contends, would have been far more inequitable than the present system. We agree with appellants, however, that administrative difficulty is no excuse for fundamental unfairness. In fact, the argument advanced by the SCRTD rings somewhat hollow in light of the fact that in 1984, it sponsored legislation which would have allocated voting strength based on parcel area. Although the Legislature adopted this

proposal, it subsequently was vetoed by the Governor on other grounds and never became law.[15]

In contrast to *Salyer*, the voting scheme at issue in this case does not accord the most votes to the property owner who must pay the largest assessment. Here, votes are calculated based on assessed value, but the assessment is based on parcel or floor area. Even under the less stringent rational basis test, there simply is no relationship whatsoever between votes awarded and assessment paid. The distinction drawn by the statutory scheme is made more egregious because, under Proposition 13, the true economic status of the property bears little relationship to the burden of the assessment. Under the circumstances, we must conclude that the distinction drawn by the Legislature between votes awarded and assessment paid does not pass constitutional muster.

We also reject the argument that the Legislature was free to restrict the franchise in any way that it desired because special assessment elections are not constitutionally mandated. Although the state can deny the right to an election in a special assessment proceeding (*Hoffman v. City of Red Bluff* (1965) 63 Cal.2d 584, 594 [47 Cal.Rptr. 553, 407 P.2d 857]; *County of Riverside v. Whitlock* (1972) 22 Cal.App.3d 863, 872 [99 Cal.Rptr. 710]), it can grant it only in strict compliance with equal protection

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[15] The legislation proposed by the SCRTD also contained an explicit exemption for residential property within the assessment districts which, according to our review of the legislative history of the measure, the Governor believed was unconstitutional.

requirements. (*Kramer v. Union School District, supra,* 395 U.S. 621, 628-629 [23 L.Ed.2d at pp. 590-591].)

Neither property owners nor nonproperty owners in the MOS-1 districts may claim a constitutional right to vote on whether or not the assessment districts should be formed; similarly, the plaintiffs in *Kramer, Cipriano,* and *Kolodziejski* could assert no federal constitutional right to vote on the matters at issue in those cases.

Once the right to vote is conferred, however, the equal protection clause requires that, in matters of general interest to the community, restriction of the franchise on grounds other than age, citizenship, and residence can be tolerated only upon proof that it furthers a compelling state interest. (*Hill v. Stone, supra,* 421 U.S. 289, 297 [44 L.Ed.2d at pp. 178-179].) As we have discussed, *ante,* no such interest exists here.[16]

This brings us to the question of severability. Having found that the Legislature's restriction on the franchise constitutes a denial of equal protection, we must now determine whether the remainder of the statutory scheme falls with the invalid portion of the legislation. If the election provisions are not severable, then "the void part taints the remainder and the whole becomes a nullity." (*In re Blaney* (1947) 30 Cal.2d 643, 655 [184 P.2d 892]; accord *Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 330 [118 Cal.Rptr. 637, 530 P.2d 605].)

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[16] Without reaching the issue, we note here that the restriction on the franchise contained in section 33002.2 et seq. is in apparent conflict with section 22, article I of the California Constitution. That section states: "The right to vote or hold office may not be conditioned by a property qualification."

In considering this issue, we first note that the special assessment law set forth in section 33000 et seq. contains no severability clause of its own. Such a clause does appear, however, in section 31520.[17] Although not conclusive, a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanically (i.e., grammatically) severable.[18] (*McCafferty v. Board of Supervisors* (1969) 3 Cal.App.3d 190, 193 [83 Cal.Rptr. 229].)

The final determination depends on whether the remainder of the statute " 'is complete in itself and would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute.' " (*Santa Barbara Sch. Dist. v. Superior Court, supra,* 13 Cal.3d at p. 331; see also *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 320 [152 Cal.Rptr. 903, 591 P.2d 1].)

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[17] Section 31520 provides: "If any section, subsection, sentence, clause, or phrase of this part, or the application thereof to any person or circumstance, is for any reason held invalid, the validity of the remainder of this part, or the application of such provision to other persons or circumstances, shall not be affected thereby. The Legislature hereby declares that it would have passed this part, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, or the application thereof to any person or circumstance, be held invalid."

[18] There is no dispute in this case that the invalid portion of the statutory scheme is mechanically severable from the remainder. Section 33002.2 et seq. is grammatically complete and distinct from the other provisions of the special assessment law.

Section 31520 notwithstanding, we are convinced that the Legislature would not have enacted the special assessment law in this case without including some provision for a referendum election or other protest scheme. We reach that conclusion for several reasons.

First, we attach little weight to the general severability provisions of section 31520. That statute was enacted in 1964, some 20 years *before* the enactment of the special assessment legislation at issue here, and it contains no language indicating its applicability to subsequently added chapters. (Cf. *Shouse v. Pierce County* (9th Cir. 1977) 559 F.2d 1142.)[19]

The presumption of severability which would attach had the Legislature considered the issue in 1983, simply does not exist in this instance.[20]

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[19] *Shouse*, heavily relied upon by the SCRTD, is not to the contrary. The severability clause in that case was included within the terms of the challenged legislation itself. Moreover, the Ninth Circuit expressly determined that the protest provisions at issue there were not an integral part of the statute and that the Washington State Legislature would have enacted the measure in any event. As we explain, *infra*, we reach a contrary result in this case.

[20] One treatise sets forth the applicable rule as follows: "Although there are no measurable differences in effect between general separability acts and separability clauses in individual statutes, it is reasonable to infer that because a general act cannot control subsequent legislative intent and therefore is questionable evidence of it, less weight may attach to a general rule of separability than to a clause in a separate act." (Sutherland, Statutory Construction (4th ed. 1986) § 44.11.)

Second, and more importantly, the legislative history of section 33000 et seq. makes it clear that the election provisions were a key inducement to the passage of the law. Although the early versions of the legislation did not allow for a referendum on the formation of the assessment districts, state Senator Diane Watson, the author of the bill (Sen. Bill No. 1238), proposed the voting scheme eventually enacted as a direct limitation on the Board's authority.

This amendment, among others, apparently was designed to overcome considerable opposition to the bill as originally proposed.[21] Viewed in this light, there can be little question but that the election provisions were integral to the ultimate passage of the legislation.

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[21] In a statement delivered April 27, 1983, before a Senate committee, Senator Watson observed: "SB 1238 authorizes the SCRTD Board of Directors to establish benefit assessment districts around Metro Rail stations when the land would receive special benefit by virtue of being near the station. The measure also authorizes the Board to issue bonds to be paid by the assessment. *The benefit districts could be formed and the bonds issued without the necessity of holding an election.*" (Italics added.)

In a subsequent statement proposing an amendment to the bill, Senator Watson commented: "Under SB 1238, SCRTD could establish Benefit Assessment Districts around the Metro Rail stations. . . . [¶] My bill would also allow SCRTD to issue bonds to be paid by these assessments. . . . [¶] *I have amended this bill to address several concerns which arose during policy committee. One of the amendments allows for an election to be held if property owners protest the assessment formula.* Another amendment distinguishes this assessment from a tax, since these assessments would be based on parcel size and/or floor area." (Italics added.)

Third, and lastly, although a special assessment may be imposed without any election whatsoever (see discussion, *ante*), our review of assessment legislation in this state demonstrates that some form of referendum or other protest scheme nearly always has been provided by law. (See, e.g., Sts. & Hy. Code, §§ 5000 et seq., 8500 et seq., 10000 et seq., 22500 et seq.; Gov. Code, §§ 53311 et seq., 54703 et seq.; Pub. Util. Code, § 99000 et seq.) Given this history of loyalty to the electoral process, we seriously doubt that the Legislature would have enacted the assessment statutes in this case without some provision for voting rights.

Based upon the foregoing, we can only conclude that the election provisions of the statute are not separable from the remaining portions of the enactment, and that, as a result, the statutory scheme in its entirety must fall as unconstitutional.

Even were we to find no constitutional defect in the voting scheme enacted by the Legislature, we would be forced to hold that the SCRTD was without the authority to create an exemption for residential property. As we have noted earlier, the statutory scheme itself exempts neither residential uses nor property owned by nonprofit organizations. It also contains no language permitting an administrative exemption of such property. Although legislation sponsored by the SCRTD in 1984 would have specifically excluded residential property from the assessment, the Governor ultimately vetoed the measure. (See discussion, *ante*.)

Lacking express statutory authority, the SCRTD could not fashion an exemption from the special assessment law

for any class of persons or property. Over a half century ago, our Supreme Court observed that "[e]xemption from local assessment should, even more than exemption from general taxation, be based on *express statutory authority,* for every such exemption increases the burdens of other property owners . . . . " (*Hollywood Cemetery Assn. v. Powell* (1930) 210 Cal. 121, 135 [291 P. 397, 71 A.L.R. 310]; italics added.)

Only the Legislature possesses the power to exempt property from special taxation or local assessment. (14 McQuillin, Municipal Corporations (3d ed. rev. 1987) § 38.80.) Here, the statutory scheme vests the SCRTD with the authority only to create the special assessment districts and to levy the assessment on property benefited by its proximity to the Metro Rail stations. Under the circumstances, the administrative creation of an exemption for residential property constituted nothing more than an "end run" around the statute and the legislative process. We think it clear that the SCRTD may not do by administrative fiat what the Legislature was prevented from doing by the Governor's veto.

This is true even though the City of Los Angeles may have coerced the SCRTD into creating the exemption by the passage of an ordinance conditioning the city's multimillion dollar contribution to the MOS-1 project on the exclusion of residential property from the assessment. While the city may have possessed the authority to fashion such an exemption if it had been granted the power under the statute to levy the assessments in this first instance, the SCRTD most certainly did not.

Based upon the foregoing, we find it unnecessary to reach the other issues raised on this appeal. Although we express no opinion as to the wisdom or utility of the legislation creating the special assessment districts, well-established constitutional principles require that we invalidate the law as presently enacted.

We recognize the necessity of permitting legislative experimentation to meet the often novel problems confronting local communities. This is particularly true in the case of a regional mass transportation system costing billions of dollars and affecting millions of people.

As this case illustrates, it is often difficult to decide when such experimentation and political compromise have resulted in an impermissible and unduly burdensome statutory scheme. We have no doubt, however, that the legislation at issue here cannot stand when measured against the applicable constitutional standards.

The judgment is reversed. Appellants to recover costs on appeal.

Roth, P.J., and Gates, J., concurred.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, Petitioner, vs. HELEN M. BOLEN, Respondent.	Case No. C 656503 STATEMENT OF DECISION (Filed 1/4/88)
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY CO., et al., Intervenors.	

The Court submits its Statement of Decision as Follows:

THE ULTIMATE QUESTION: Should this court issue a Writ mandating that Respondent Bolen certify SCRTD's two (2) Resolutions authorizing sale of: (1) Special Benefit Assessment District A-1 Revenue Bonds and, (2) Special Benefit Assessment District A-2 Revenue Bonds?

Respondent and Intervenors have raised numerous issues in opposition to SCRTD's petition for writ, in essence, challenging the legality, indeed, the constitutionality of the District's authority, including certain legislation and resulting proceedings out of which the Resolutions arise.

The State Legislature has found and declared (in Section 33000, et seq. of the Public Utilities Code that: inter alia,

> "(a) It is necessary and in the best interest of the citizens of the State to authorize the Southern California Rapid Transit District to levy special benefit assessments for needed public rail rapid transit facilities and services on the property which benefits from those facilities and services."
>
> "(b) The rail rapid transit facilities and services provide special benefits to parcels of land, and improvements thereon, in the vicinity of rail rapid transit stations, and provide general benefits to the community at large. The Board of Directors of the (SCRTD) shall be the conclusive judge of the proportion of special and general benefits produced by the facilities and of the distribution of the special benefits among parcels of property within the benefit assessment district."

And at Section 33001 it requires:

> "(c) . . . The boundaries of the benefit district and of each zone, if any, therein shall be drawn so as to reflect, as accurately as possible, the areas in which special benefits are conferred by reason of the proximity and operation of one or more rail transit stations."

Other sections provide:

Section 33002:

> "(a) In determining the amount of a special benefit assessment, the board may measure the benefit to real property in the benefit district . . . by the parcel area and the floor area of

real property and improvements thereto of improved real property."

"(b) The special benefit assessment constitutes a charge imposed on particular real property for a district project of direct benefit to that property, and does not constitute ad valorum taxes or any other form of general tax levy applying a given rate to the assessed valuation of all taxable property within the district . . . "

"(d) The revenue from a special benefit assessment, . . . shall be used only for financing of the facility for which it was levied . . . "

Section 33002.1:

"The board may order benefit assessment without an election, except as otherwise provided in Section 33002.2."

Section 33002.2:

"An election shall be held if the board finds that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by the owners of at least 25 percent of the assessed value of real property within the benefit district.

Section 33002.3:

"(b) . . . In any election . . . each voter . . . may cast one vote for each one thousand dollars ($1,000) or fraction thereof, worth of land or improvements owned by the voter in the benefit district as shown on the most recent equalized assessment roll."

That is the basic mandate which the State has given to the SCRTD; it is the responsibility of this court, in

considering the ultimate question, to review that authority and the conduct of the District which supposedly depends upon it.

All apparently agree that the standard for our examination here is extremely limited; what has been done, either by the State Legislature or the SCRTD cannot be undone unless it is contrary to law, e.g., the unconstitutionality of Section 33000 et seq. itself, or there is substantial mistake, fraud or their equivalence or lack of benefit. The scope of judicial review was defined by the *Dawson* case, stating:

> " . . . (T)he court will not declare the assessment void unless it can plainly see from the face of the record, or from facts judicially known, that the assessment . . . is not proportional to the benefits, or that no benefits could accrue to the property assessed." (16 Cal.3d 676, 684)

With this standard in mind, the entire administrative record has been carefully examined and the cases reviewed with the attitude referenced in *Jones v. San Diego*, ". . . not as barriers to growth, but as the guidelines to accomplish the needs of tomorrow." (157 Cal.App.3d 745, 758)

Respondent's and Intervenors' burden to demonstrate from the faces [sic] of the statute, the administrative record and matters of which this court may take judicial notice, that the assessment district suffers from fatal infirmities is a substantial and difficult one to carry. For all the reasons set forth in petitioner's (SCRTD) Reply Memorandum the Court is impressed that they have not met that burden and that their opposition must fail.

Interestingly, the Court was asked to take judicial notice of many pages of printed matter, but the practically paralytic plight of our daily gridlock was not included; nevertheless, the record here and the sense of urgency in the Legislature's findings and declarations introductory to Section 33000 are sufficient to establish the great importance of this litigation and its final resolution to the economic health and prosperity of Los Angeles in its several parts. It is abundantly clear that bold efforts are underway, employing cooperation and concensus development on behalf of government and persons who would be assessed in order to enhance the value of their property while supporting the general good. The clarity of legislative purpose and intent in this regard is exceeded only by the scrupulously careful efforts of SCRTD to follow that charge.

By way of illustration only, consider SCRTD's efforts to establish and quantify "benefits" as required by the legislation (see Draft Report of the Benefit Assessment Task Force on Benefit Assessment Districts (BAPTF) [sic], January, 1985, Administrative Record, pp. 2490-2598). The data therein contained is powerful evidence that extensive benefits will result from the assessments, abundantly supportive of decisions which followed.

At (*id.*) p. 2516, the report states:

> "Implementation of a major public improvement such as a rapid rail system offers the opportunity for the private development market to focus land use and development decisions in specific areas. These decisions may result in a variety of economic impacts. The documented experiences of North American cities that have

> implemented major rail transit systems since 1970 suggest that the economic impacts of transit systems on property and property owners can be divided into two broad categories, based on the size of the area impacted. The first . . . (is) community wide . . . The second category includes benefits that accrue to specific parcels of land . . . "
>
> "Examination of the benefit experiences of other cities with major rail transit systems in light of the existing economic conditions in Los Angeles indicates that similar benefits can be expected to occur as a result of implementation of the Metro Rail system. Forecasted benefits for the Central Business District station areas range from a low of $729 million to a high of $1.46 billion."

Details of expected benefits are provided covering such areas as: Recipients of specific benefits, including owners of real property and the proprietors of hotel, retail, commercial office and other commercial establishments; Categories of Specific Benefits, e.g., appreciation of land value; ability to command premium lease rates; increased sales activity; higher occupancy levels, reduced parking costs, etc. (*id.* p. 2520); Specific Benefits Experienced in other North American Cities, e.g., Toronto, Atlanta, Miami; and Forecast of Monetary Benefits For the Los Angeles Central Business District, indicating

> " . . . (a) range of benefits from $729 million to $1.45 billion by the year 2000." (*id.* p. 2529)

The Court elects to deal with the subject of benefits primarily because of objectors great emphasis on the requirement of "proportionality" between benefits and

assessments. There is an indication in the cases that the term does not mean that the one has to bear some (or any) ratio to the other, but rather, there should be a simple increase in the value of the property in excess of the assessment imposed. It is the assessment in excess of the benefit which is decried. The *Dawson* case (at page 684) uses the language, ". . . not proportional to the benefits, or that no benefits could accrue to the property assessed," and in a footnote cites the *Harrison* (44 Cal.App.3d 852) and *Spring Street Co.* (170 Cal.24) cases as examples of actions rejected because the standard was not met, the former citing the latter as follows:

> " . . . That the return to the property owner by way of benefits is . . . basic . . . becomes apparent from the consideration that if we are not able to say that the owner for the specific charge imposed is compensated by the increased value of the property, then most manifestly we have a special tax upon a minority of the property owners, which tax is for the benefit of the public and which tax is special, unequal and ununiform."
>
> "Therefore, the compensating benefit to the property owner is the warrant, and the sole warrant, for the Legislature to impose the burden of the special assessment." (pp. 856-857)

In our context "proportional" means "not more than." There is nothing before the Court, including in the declarations of objector's experts, which denies that the benefits will be more than the assessments.

THE ELECTION ISSUES:

The SCRTD's voting scheme is constitutional under equal protection and due process clauses of the 14th Amendment to the United States Constitution and Article I, Section 7 of the California Constitution. There is no requirement that residents and commercial tenants be extended the franchise on a "one person, one vote" principle. Our facts are more akin to those in *Salyer v. Water District* (410 US 719) than to those which are controlled by *Kramer v. School District* (395 US 621) and *Phonix* [sic] *v. Kolodziejski* (399 US 204). Here, as there, to quote from *Salyer*:

> " . . . (T)he district, by reason of its special limited purpose and the disproportionate effect of its activities on landowners as a group, is an exception to the rule . . . " (extending "one person, one vote" principle to certain types of elections) (pp. 727-728)
>
> " . . . (T)here is no way that the economic burdens of the district operations can fall on residents qua residents, and the operations of the districts primarily affect the land within their boundaries." (p. 729)
>
> " . . . (T)he question for determination is . . . if any state of facts reasonably may be conceived to justify California's decision to deny the franchise to lessees while granting it to landowners." (p. 732)

The disproportionate effect of activities and the possibilities of manipulations suggested as sufficient in *Salyer* might just as appropriately pertain here.

There also is no debilitating defect in the manner in which the votes are weighed. Nor is there a requirement that there be a relationship between the method for determining the amount of a special benefit assessment (Section 33002) on one hand and the manner in which voting power is weighed (Section 33002.3). Again, the *Salyer* case is helpful. In it the Supreme Court permitted the voting scheme, even though votes were allocated based on the appraised value of land, exclusive of improvements, minerals and mineral rights, while assessments were levied upon individual properties based upon certain benefits otherwise determined. (*Sayler* [sic], 410 US 724)

In our case there is a strong indication that a readily available procedure for determining potential voters was much to be desired. The "most recent equalized assessment roll," as identified by Section 33002.3, would appear quite adequate for that purpose. But it would be most inadequate for purposes of assessing benefits. The reason is set out in a response to an issue raised before the BAPTF [sic]:

> " . . . (P)roposition 13 has had the effect of distorting the pattern of assessed valuation in such a manner that properties that have not changed hands since 1978 are likely underassessed in relation to market value. Use of assessed valuations as part of the benefit assessment formula would correspondingly distort assessment levels presenting substantial equity issues in that equally situated properties would not be equally treated." (Admn. Record p. 2375)

Other objections, though thoroughly briefed and extremely eloquently argued, are not persuasive in face of the overwhelming evidence before the Court, briefly:

> The showing that petition procedures (time and contents of notice) were unfair is unconvincing in light of ordinary efforts which were not made, e.g., mailing to list, soliciting protestors; attending publicized meetings where full information was available.
>
> The objection that the assessment district is violative of Article XIII A of the California Constitution, is without merit. This is clearly a special assessment district and as such is not an ad valorum [sic] or "special tax" under California cases: *Solvang v. Board* 112 Cal.App.3d 545; *Fresno v. Malmstrom* 94 Cal.App.3d 974. And Section 33002(b) specifically says this type of charge is not an ad valorum [sic] tax.
>
> The objection that the SCRTD improperly delegated its powers to the BAPTF [sic] flies in the face of clear indications to the contrary in the Admn. Record. (See pp. 4, 32, 34, 49, 78, 99, 145) The intended and actualized purpose of the BAPTF [sic] was to make recommendations to SCRTD.

The Court, having concluded that there is no constitutional impairment of election procedures, need not reach the severability issue; if it had, any defective portions would be severed pursuant to Public Utilities Code Section 31520, which serves to preserve other portions of the special assessment statute if some are stricken. Besides, it is highly unlikely that a Legislature which provides (at Section 33002.1) that "The board may order benefit assessment without an election . . . " would intend that the entire section fall because one section calling for an election is struck down.

The objection by the Jonathan Club that is is being improperly denied exempt status as a non-profit organization and was not noticed fairly relative to changing its status, is meritless. It was fully aware of ongoing meetings at which all issues affecting the district were being discussed, reports and communications exchanged particularly on the subject of non-profit exemptions. The Club offers no explanation as to the reasons for its inattendance or that its absence was in any way due to conduct of SCRTD.

(1) The Jonathan Club was accorded due process in the overall procedure relating to notice, the hearing, proceedings at the hearing and all changes in the agenda for that hearing.

(2) It was not incumbent upon the City Council (or any other public entity), after giving notice of the public hearing, to give notice of any potential changes in the proposed special assessment plan.

(3) The Jonathan Club had actual notice of the proposed action of the City Council two days before the public hearing, and this notice was not inadequate.

(4) The City Council and SCRTD applied the proper test in determining that some properties owned by non-profit organizations would be exempt from assessment, while other properties owned by non-profit organizations would not be exempt.

(5) There was an adequate determination of special benefit to the Jonathan Club.

THEREFORE, objections are overruled and the Petition of SCRTD is granted; the Writ is ordered issued and

Respondent Helen M. Bolen is commanded to certify SCRTD's two (2) resolutions authorizing sale of: (1) Special Benefit Assessment District A-1 Revenue Bonds and, (2) Special Benefit Assessment District A-2 Revenue Bonds, forthwith and in no event later than the close of business on December 8, 1987.

DATED: 1/4/88

/s/ Billy G. Mills
BILLY G. MILLS, JUDGE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, Petitioner, vs. HELEN M. BOLEN, Respondent.	Case No. C 656 503 JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE (Filed 1/4/88)
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY CO., et al., Intervenors.	

This matter came on regularly for trial before this Court on Wednesday and Thursday, December 2 and 3, 1987, in Department 35 before the Honorable Billy G. Mills, pursuant to the Petition of Southern California Rapid Transit District ("SCRTD") in accordance with the trial schedule set by the Court. The Petition was served on Respondents and Intervenors in the manner provided by law. Dorothy Wolpert and Mark Drooks of Bird, Marella, Boxer, Wolpert & Matz appeared as attorneys for Petitioners, Marilyn Garcia and Brobeck, Phleger & Harrison appeared as attorneys for Respondent, Kevin Brogan and Dean Dennis of Hill, Farrer & Burrill appeared as attorneys for Intervenors, The Atchison, Topeka & Santa Fe Railway Company, et al. and John Shiner

and Stephanie McNutt of MacDonald, Halsted & Laybourne appeared as attorneys for Intervenor Jonathan Club.

Respondent and Intervenors, having filed Answers to the Petition, all sides having submitted Memoranda of Points and Authorities in support of their respective contentions, the Administrative Record and additional evidence in the form of declarations proffered by Petitioner, Respondent and Intervenors and Requests for Judicial Notice having been reviewed by the Court and received in evidence and examined by the Court, subject to certain objections and evidentiary rulings, arguments having been presented and the cause submitted for decision, the Court, having rendered its Statement of Decision, which included the Findings that applying the appropriate legal standard the election scheme set out in *Public Utilities Code*, §§ 33000, *et seq.*, complies in all respects with the constitutional requirements of the *United States* and *California Constitutions*, that Petitioner SCRTD has amply demonstrated the existence of benefit for the purpose of assessing the benefited properties and that Respondents' and Intervenors' other objections are meritless.

IT IS ORDERED THAT:

1. A Peremptory Writ of Mandate issue under the Seal of this Court commanding Respondent Helen M. Bolen to certify forthwith, but no later than December 8, 1987 the Resolutions passed by the SCRTD Board of Directors for the issuance of revenue bonds for Assessment Districts A-1 and A-2;

2. Judgment to be entered in favor of Petitioner Southern California Rapid Transit District and against Respondent Helen M. Bolen and Intervenors.

DATED: 1/4/88

/s/ Billy G. Mills
THE HONORABLE
BILLY G. MILLS,
JUDGE LOS ANGLES
SUPERIOR COURT

Presented by:

Vincent J. Marella
Dorothy Wolpert
Mark T. Drooks
BIRD, MARELLA, BOXER, WOLPERT & MATZ
A Professional Corporation
10960 Wilshire Boulevard, 24th Floor
Los Angeles, California 90024
(213) 312-0300

PROOF OF SERVICE BY MAIL

State of California)
) ss.
County of Los Angeles)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10960 Wilshire Boulevard,Twenty-Fourth Floor, Los Angeles, California 90024.

On December 8, 1987 I served the foregoing document described as JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Kevin H. Brogan, Esq.
Dean E. Dennis, Esq.
HILL, FARRER & BURRILL
445 South Figuerca, 34th Floor
Los Angeles, California 90071

John J. Wasilczyk, Esq.
Earle Miller, Esq.
BROBECK, PHLEGER & HARRISON
444 South Flower Street, #4300
Los Angeles, California 90017

Marilyn L. Garcia, Esq.
700 South Flower Street, #2200
Los Angeles, California 90017

John R. Shiner, Esq.
MACDONALD, HALSTED & LAYBOURNE
725 South Figuerca Street
36th Floor
Los Angeles, California 90017

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

Executed on December 8, 1987 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Beverly Wade
Beverly Wade

STATUTORY ADDENDUM

The Fourteenth Amendment to the United States Constitution, provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article One, Section Seven of the California Constitution provides in pertinent part:

> "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws . . . "

U.S.C. § 33000-33002.8

CHAPTER 12. SPECIAL BENEFIT ASSESSMENT DISTRICTS

Section

33000 Legislative findings and declarations.

33001. Resolution providing for notice and hearing on intention to establish districts and levy assessment.

33001.5 Hearing on establishment of district; time and place; resolution; determination by board.

33002. Amount of special benefit assessment; nature of assessments; powers of district; use of revenue.

33002.1 Order for benefit assessment without election.

33002.2 Election; finding.

33002.3 Elections; number of votes per voter.

33002.4 Multiple ownership; designation of owner for purposes of qualifying as voter; legal representative.

33002.5 Petition for confirmation by voters; filing; adoption of resolution.

33002.6 Election on proposition of levying assessment by benefit district; resolution.

33002.7 Special election on levying of assessment; time; procedure.

33002.8 Levy of assessment; majority approval.

§ 33000. Legislative findings and declarations

The Legislature finds and declares that:

(a) It is necessary and in the best interest of the citizens of the state to authorize the Southern California Rapid Transit District to levy special benefit assessments for needed public rail rapid transit facilities and services on the property which benefits from those facilities and services.

(b) The rail rapid transit facilities and services provide special benefits to parcels of land, and improvements thereon, in the vicinity of rail rapid transit stations, and provide general benefits to the community at large. The Board of Directors of the Southern California Rapid Transit District shall be the conclusive judge of the proportion of special and general benefits produced by the facilities and of the distribution of the special benefits among parcels of property within the benefit assessment district.

(Added by Stats.1983, c. 1322, § 4.)

§ 33001. Resolution providing for notice and hearing on intention to establish districts and levy assessment

(a) Whenever the board finds that property adjacent to, or in the vicinity of, one or more rail transit stations, or proposed rail transit stations, of the district receives or will receive special benefit by reason of the location or operation of one or more of those rail transit stations, the board may, by resolution adopted by a two-thirds vote of

its members, provide for notice and hearing on its intention to establish one or more special benefit districts and to levy a special benefit assessment on real property therein for the purpose of financing, in whole or in part, the acquisition, construction, development, joint development, operation, maintenance, or repair of one or more rail transit stations and rail transit related facilities located within the benefit district.

(b) For the purposes of this chapter, "benefit district" means a special benefit assessment district established pursuant to this chapter, the area of which shall not lie more than one mile from the center point of any rail transit station or proposed rail transit station within the central business district of the City of Los Angeles and shall not lie more than one-half mile from the center point of any rail transit station or proposed rail transit station at any other location. "Central business district of the City of Los Angeles" means that area within the city of Los Angeles lying east of the Harbor Freeway (State Highway Route 11).

(c) The resolution may provide that the proposed benefit district will contain separate zones, which may consist of either contiguous or noncontiguous areas of land within the district. The proposed benefit district and each proposed zone, if any, therein shall be an area adjacent to, or in the vicinity of, one or more rail transit stations or proposed rail transit stations. The boundaries of the benefit district and of each zone, if any, therein shall be drawn so as to reflect, as accurately as possible, the areas in which special benefits are conferred by reason of the proximity and operation of one or more rail transit stations.

(d) The notice stating the time and place of the hearing, and setting forth the boundaries and purpose of the proposed benefit district, shall be published prior to the time fixed for the hearing pursuant to Section 6066 of the Government Code.

(e) Notice shall also be mailed at least 30 days prior to the hearing to all owners of real property within the boundaries of the proposed benefit district whose names and addresses appear on the last equalized assessment roll or are otherwise known to the Board of Supervisors of the County of Los Angeles or to the district.

(f) For purposes of this chapter, "transit related facilities" means land, buildings and equipment or any interest therein, whether or not the operation thereof produces revenue, which has, as its primary purpose, the operation of the rail transit system or the providing of services to the passengers of the rail transit system, but does not mean any land, buildings, or equipment, or interest therein, which is used primarily for the production of revenue not arising from the operation of the rail transit system.

(Added by Stats. 1983, c. 1322, § 4.)

§ 3301.5 Hearing on establishment of district; time and place; resolution; determination by board

(a) At the time and place fixed for the hearing on the establishment of the benefit district, or at any time and place to which the hearing is adjourned, the board shall proceed with the hearing. At the hearing, interested

persons may appear and present matters material to the proposed board action. At the conclusion of the hearing, the board shall, by a resolution adopted by a two-thirds vote of its members, determine whether to proceed with the proposed action.

The resolution shall state, as appropriate, the maximum and minimum rate of assessment, the amount of the special benefit assessment and the purposes for which it is to be levied, the estimated cost of accomplishing the purposes, and the dates or approximate intervals at which the assessment shall be levied. The resolution shall also state that the exterior boundaries of the benefit district are set forth on a map on file with the secretary of the district, which map shall govern for all purposes as to the extent of the benefit district and zones, if any, therein and that the area set forth on the map shall thereupon constitute and be known as "Benefit District No. ___ of the Southern California Rapid Transit District," or as "Benefit Zone ___ of the Benefit District No. ___ of the Southern California Rapid Transit District," as designated by the board.

(b) The resolution shall be submitted to the governing body. The governing body shall, after a public hearing conducted by the governing body and prior to the creation of the benefit district, approve, or amend and approve, as amended, or disapprove the geographic boundaries of the benefit district and the method of assessment. The resolution of approval or disapproval from the governing body shall be returned to the board.

(c) The board shall, by a two-thirds vote of its members, determine whether to create the benefit district as

approved by the governing body. If the board decides to proceed with creating the benefit district as approved by the governing body, the board may, in addition to any amendments made by the governing body, reduce the size of the benefit district, but in so doing shall not include any territory not included in the benefit district approved by the governing body nor change the approved method of assessment. The determination by the board is final and conclusive.

(d) For purposes of this section, "governing body" means the city council of a city in which the proposed benefit district is located or, if the benefit district is located in unincorporated territory, the board of supervisors of the county in which the proposed benefit district is located.

(e) The board may provide in the resolution, or in a later resolution adopted by a two-thirds vote of the members of the board, for changes in the assessment to particular real property within the benefit district or any zone therein arising out of changes in the parcel area or floor area of that real property.

(Added by Stats. 1983, c. 1322 § 4.)

§ 33002. Amount of special benefit assessment; nature of assessments; powers of district; use of revenue

(a) In determining the amount of a special benefit assessment, the board may measure the benefit to real property in the benefit district or zones therein by the

parcel area of unimproved real property and by the parcel area and the floor area of real property and improvements thereto of improved real property, as deemed appropriate by a resolution adopted by a two-thirds vote of the members of the board.

(b) The special benefit assessment constitutes a charge imposed on particular real property for a district project of direct benefit to that property, and does not constitute ad valorem taxes or any other form of general tax levy applying a given rate to the assessed valuation of all taxable property within the district.

(c) The district shall possess all powers necessary for, incidental to, or convenient for the collection, enforcement, administration, or distribution of the special benefit assessment in accordance with California law.

(d) The revenue from a special benefit assessment, which is imposed pursuant to this chapter, or from bonds secured by such a special benefit assessment, for the purpose of financing a rail transit station or rail transit related facility located within the benefit district, shall be used only for financing of the facility for which it was levied, and that revenue shall not be used for any other purpose or the payment of any other expense of the district, including, but not limited to, transit, transportation, or operating expense.

(Added by Stats. 1983, c. 1322, § 4.)

§ 3302.1. Order for Benefit assessment without election

The board may order benefit assessment without an election, except as otherwise provided in Section 33002.2.

(Added by Stats. 1983, c. 1322, § 4.)

§ 33002.2. Election; finding

An election shall be held if the board finds that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by the owners of at or at [sic] least 25 percent of the assessed value of real property within the benefit district.

(Added by Stats. 1983, c. 1322, § 4.)

§ 33002.3. Elections; number of votes per voter

(a) For purposes of this chapter, "voter" means an owner of real property which is assessed or proposed to be assessed under this chapter and which is within the boundaries of the benefit district.

(b) In any election conducted under this chapter, each voter in the benefit district may cast one vote for each one thousand dollars ($1,000), or fraction thereof, worth of land or improvements owned by the voter in the benefit district as is shown on the most recent equalized assessment roll.

(Added by Stats. 1983, c. 1322, § 4.)

§ 33002.4. Multiple ownership; designation of owner for purposes of qualifying as voter; legal representative

(a) Where land in the benefit district is owned in joint tenancy, tenancy in common, or any other multiple ownership, the owners of that land shall designate in writing which one of the owners shall be deemed the owner of that land for purposes of qualifying as a voter.

(b) The legal representative of a corporation or an estate owning real property in the benefit district may act on behalf of the corporation or the estate.

(c)(1) For purposes of this Chapter, "legal representative," means an official of a corporation owning real property in the benefit district.

(2) For purposes of this chapter, "legal representative" also means a guardian, conservator, executor, or administrator of the estate of the holder of title to real property in the benefit district who is all of the following:

(A) The person is appointed under the laws of this state.

(B) The person is entitled to the possession of the estate's real property.

(C) The person is authorized by the appointing court to exercise the particular right, privilege, or immunity which he or she seeks to exercise.

(d) Before a legal representative acts as a voter at a district election, the legal representative shall present to the precinct board a certified copy of his or her authority

which shall be kept and filed with the returns of the election.

(Added by Stats. 1983, c. 1322, § 4.)

§ 33002.5 Petition for confirmation by voters; filing; adoption of resolution

The petition for confirmation by the voters shall be filed with the board within 30 days after the conclusion of the public hearing required by Sections 33001 and 33001.3. If a petition meeting the requirements of Section 33002.2 is filed, the board shall adopt a resolution approving the proposal to form a benefit district subject to confirmation by the voters of the benefit district.

(Added by Stats. 1983, c. 1322, § 4.)

§ 33002.6 Election on proposition of levying assessment by benefit district; resolution

After the board has adopted a resolution approving the proposal to form a benefit district under Section 33002.5, but before the board may levy any assessment, the board shall call an election in the benefit district for the purpose of submitting to the voters the proposition of levying the assessment by the benefit district. The resolution calling the election shall state each of the items required to be contained in the resolution adopted pursuant to Section 33001.6.

(Added by Stats. 1983, c. 1322, § 4.)

§ 33002.7. Special election on levying of assessment; time; procedure

The board shall submit the proposition of levying an assessment to the voters of the benefit district in a special election to be held within 90 days following the adoption of the resolution calling an election. The provisions of the Elections Code relating to the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of elections, insofar as they may be applicable, shall govern all elections conducted pursuant to this chapter.

Ballots for the special election may be distributed to voters by mail with return postage prepaid, and shall be received by the district either by mail or hand delivery at the address shown on the postage prepaid envelope no later than 3:00 p.m. on the special election day.

The district shall pay to the county the reasonable expenses that the county incurs in conducting an election under this chapter, and the district may expend funds collected from the benefit assessment approved pursuant to the election for this purpose.

(Added by Stats. 1983, c. 1222, § 4.)

§ 33002.8. Levy of Assessment; majority approval

If a majority of the votes cast at the election conducted under this chapter approve the proposition, the board may levy the assessment pursuant to the resolution adopted pursuant to Section 33002.

(Added by Stats. 1983, c. 1222, § 4.)

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No. 91-1741

In The

Supreme Court of the United States

October Term, 1991

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.,

Petitioners,

v.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, HELEN M. BOLEN,

Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

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DESIGNATION OF CORPORATE RELATIONSHIPS

Southern California Rapid Transit District, filing this brief in opposition to Petition for Writ of *Certiorari* to the Ninth Circuit Court of Appeals as a Respondent in this proceeding, states that:

This is its original Designation of Corporate Relationships.

Southern California Rapid Transit District is an independent governmental agency; it is not owned by any other agency or corporation.

Southern California Rapid Transit District does not have an ownership interest in any subsidiaries.

Southern California Rapid Transit District does not have any affiliate or concurrently governed associated bodies.

Dated: June 3, 1992

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BRIEF IN OPPOSITION

INTRODUCTION

This case is uniquely inappropriate for review by this Court. While not *sui generis*, it presents an issue on which this Court has more than once spoken unequivocally. Although the case has importance to a financial contribution to mass transit in Southern California, it has never presented any novel or complex legal issues for the courts.[1]

[1] Petitioners' simplistic and misleading arithmetic which produces a "five-five" division out of a five-to-two majority opinion of the California Supreme Court cannot change this fact.

Petitioners tested their arguments on many grounds at the outset of the litigation. Indeed, they started with the principle that the benefit assessment district must fail because there was no finding of benefit to property owners from construction of the subway. Four and a half years later, that argument and all their other arguments, based on both California law and the United States Constitution, have been rejected or abandoned; petitioners approach this Court on the lone ground that there was a potentially improper allocation of votes for an election that never took place and indeed was never sought by petitioners.

None of the considerations set forth in Rule 10, which governs review on certiorari, is implicated here. This case does not present an issue of general public importance. It rests squarely and exclusively on unique provisions of the California Public Utilities Code. Nor has the opinion of the California Supreme Court created any lack of uniformity of decision among courts on any issue of federal law. It is firmly based on the decisions of this Court. Thus, the single most important reason often noted by this Court for granting a petition for certiorari — that the issue sought to be reviewed involves a conflict of decisions among the lower federal courts on a point of federal law — is lacking here. This Court has not been inclined to grant certiorari even to resolve conflicts under such circumstances, where, as here, the issue presented is unlikely to recur outside the narrow context of rapid transit in Southern California.

STATEMENT OF THE CASE

This case was never about public transportation in Los Angeles, although petitioners' opening salvo would suggest otherwise. It was never a referendum on whether a subway in Los Angeles was a wise or necessary public improvement. As the California Supreme Court noted:

> "The question at issue is not whether the Metro Rail should be built and, if so, how its costs should be distributed. Neither are we asked to consider directly the desirability or usefulness of special assessment districts as a financing device to recapture some of the economic value added to a commercial area as a result of locating a rapid transit station within it. Questions concerning metropolitan transportation policy in greater Los Angeles, and the economic, environmental and aesthetic aspects of Metro Rail and of benefit assessment districts, important as they undoubtedly are as public issues, are not presented by this case, having been resolved sometimes litigated (see, e.g., Rapid Transit Advocates, Inc. v. Southern California Rapid Transit District (1986) 185 Cal.App.3d 179), and resolved in other forums over the decade." Southern California Rapid Transit District v. Bolen, 1 Cal.4th 654, 3 Cal.Rptr.2d 843 (1992); Petitioners' Appendix at 10-11.

Petitioners have tried at each step of this litigation to convince various courts that the aforementioned non-issues were at the heart of this case. In fact, they are not. The issue in the case is whether the principle of one person, one vote laid down by this Court in Reynolds v. Sims, 377 U.S. 533 (1964) applies to the property-based assessment district voting scheme set forth in California

Public Utilities Code §§ 31000-31720 or whether the circumstances here fall within the trio of post Reynolds decisions of this Court which recognize exceptions to that principle Salyer Land Co. v Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973) ("Salyer"); Associated Enterprises, Inc. v Toltec Watershed Improvement District, 410 U.S. 743 (1973); Ball v James, 451 U.S. 355 (1981). A subsidiary issue before the California Supreme Court, moved to center stage in this petition, was whether the vote allocation scheme is reasonable under all the circumstances. This case is thus about the applicability of three of this Court's holdings which are squarely on point, not about gridlock in Los Angeles.

Two final points provide background for consideration of this petition. First, California law provides for the formation of benefit assessment districts without any vote at all. Thus, in enacting Public Utilities Code §§ 31000, et seq., the Legislature could have provided for creation of the benefit assessment districts without resort to any petition or election. Second, under the statutory scheme at issue, an election would have been required if owners of only 25% of the assessed value of real property within the proposed assessment district had petitioned for an election. No such petition was ever presented to the Southern California Rapid Transit District. Petitioners never attempted to organize and submit such a petition. There was therefore no protest mounted to the establishment of the assessment district and the election provided for in the Public Utilities Code, the details of which are challenged here, was never held. Whatever the law may require on vote allocation, there was no deprivation of voting rights here; the entire issue

is merely a vehicle for an opportunistic attack on an important public measure.

ARGUMENT

A. None Of The Considerations Governing Review On Writ of Certiorari Is Presented By This Case.

Rule 10 of the Rules of this Court sets out the "character of reasons" which must be present for this Court to grant a petition for a writ of certiorari. Petitioners nowhere discuss this standard, nor make even passing reference to the Rule. This is because the matter which petitioners set before this Court does not present any of those "special and important reasons" which justify grant of the petition.

The opinion of the California Supreme Court has not decided a federal question in a way that conflicts with another state court of last resort, or of United States Court of Appeals. It has not decided an important question of federal law which has not been, but should be, settled by this Court, or a federal question in a way that conflicts with applicable decisions of this Court. On the contrary, the California Supreme Court opinion challenged here rests squarely on three decisions of this Court in similar cases.

Petitioners have pointed to no conflict between the California Supreme Court decision at issue and the decision of any other federal court at any level. Petitioners struggle to distinguish the case from this Court's controlling precedents and, failing, fall back on the arguably

irrelevant fact that this Court has recently heard, but not decided, a case dealing with the constitutionality of California's Proposition 13. That coincidence cannot provide a substitute "special and important reason" for the grant of the petition here.

Certiorari has traditionally been granted to reach problems "beyond the academic or the episodic." *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955). This case could be said to partake of both those characteristics. Academic surely, concerning, as it does, an election that was never sought and never took place; episodic also, in that it arises under a unique statute inapplicable to anything but rapid transit in Southern California.

B. The California Supreme Court Properly Held The Vote Allocation Scheme To Be Rational Under Ail The Circumstances.

As petitioners concede, the law does not require a perfect fit between the vote allocation scheme and the burden of the special assessments; it requires only that the relationship not be irrational in view of all the circumstances. As the California Supreme Court noted, the relationship between the allocation of votes and the burden of the assessment in this case is very similar to that employed in *Salyer;* it is hardly irrational.

In *Salyer*, votes were apportioned based on the appraised value of land, exclusive of improvements, minerals and mineral rights. 410 U.S. at 725 n.6. [California Water Code § 41001.] In contrast, the assessments levied upon each property by the water storage district were to be determined by the commissioners of the district "in

accordance with the benefits that will accrue to each tract of land . . . by reason of the expenditures of the money and the completion of the project, or such units of it as have been specified for immediate construction." 410 U.S. at 724. [California Water Code § 46176.] Thus, depending upon the particular improvement being constructed, the commissioners might assess some property and not others. Similarly, they might determine that the most equitable method of apportionment of the assessment was based on the assessed value of both land and improvements; or they might reasonably decide that the assessment should be based on acreage or square footage of land only; or on square footage of both land and improvements. No precise relationship between vote allocation and the allocation of financial burden necessarily existed in the statutory scheme involved in *Salyer*, yet the Court did not hesitate to pronounce the scheme constitutional under the rational relationship test. 410 U.S. at 734.

In *Town of Lockport v. Citizens for Community Action*, 430 U.S. 259 (1977) ("*Lockport*"), the Court upheld the constitutionality of a statute requiring a dual majority of both city voters and voters outside the city to approve adoption of a new county charter. In approving the plan, the Court reasoned as follows:

> "[I]t appears that the challenged provisions of New York law rest on the State's identification of the distinctive interests of the residents of the cities and towns within a county rather than their interests as residents of the county as a homogeneous unity. This identification is based in the realities of the distribution of governmental powers in New York, and is consistent

> with our cases that recognize both the wide discretion the States have in forming and allocating governmental tasks to local subdivisions, and the discrete interests that such local governmental units may have *qua* units." 420 U.S. at 268-69 (citations omitted).

Plainly, the dual majority scheme in *Lockport* did not allocate votes proportionally among suburban and urban voters. Thus, the Court approved a plan in which there was no proportional relationship whatever between the allocation of voting strength and the prospective burdens to be imposed on the voters. The California Supreme Court's conclusion that vote allocation based on assessed value is rational irrespective of any mathematical proportionality is thus consistent with this Court's practical approach to the issue. Petitioners' admission that they will pass on, and thus avoid altogether in some cases, the burden of the assessment gives their fundamental fairness argument a hollow ring. Where the "burden" is illusory; "proportionality" is not ascertainable.

The California Supreme Court's deference to issues of feasibility, practicality and administrative convenience also is consistent with established precedent. Federal courts, including this Court, repeatedly have acknowledged that administrative convenience is a legitimate factor in determining a vote allocation scheme. In *Salyer*, the Court justified the exclusion of lessees in part because of the administrative difficulties involved in determining their identity. 410 U.S. at 732-33. Specifically, the Court

noted that property owners could be identified from the assessment rolls, whereas lessees could not.[2] *Id.*

In *Tron v. Condello*, 427 F. Supp. 1175, 1192 (S.D.N.Y. 1976), the court upheld the exclusion of retired pensioners from voting in an election for members of a Retirement Board administering a pension fund, in part on the ground that including retirees would create difficulties in administering the nomination and election provisions. If the vote may be *denied* on administrative grounds when the one-person, one-vote rule does not apply, *a fortiori*, it may be diminished.

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[2] In *Salyer*, the same argument that petitioners make here, in favor of extending the franchise to tenants, also was made. Tenants, it was argued, had interests indistinguishable from those of landowners because the assessments might be passed on to them either by express agreement or increased rentals. 410 U.S. at 732. The Court, however, found many rational bases to justify exclusion of tenants, including the potential for abuse and administrative convenience. 410 U.S at 732. The Court concluded that "the exclusion of lessees from voting in general elections for the directors of the district does not violate the equal protection clause." 410 U.S. at 733. Petitioners' reliance on the presence of pass-through provisions in commercial leases hardly distinguishes away, or even diminishes, the strong precedential impact of *Salyer*. Pass-through provisions are at most an efficient mechanism for transferring a landlord's cost of doing business to tenants. In *Salyer*, the Court acknowledged the possibility that assessments would be passed on to tenants and even acknowledged that this end might be accomplished by express agreement. It nevertheless held the exclusion of tenants from voting to be constitutional. Similarly, the California Supreme Court recognized that the pass-through clauses are simply one step in a larger process by which "the financial consequences of the assessments are presumably distributed through the region." Petitioners' Appendix at 28.

In *U.S. Steel Corp. v. Public Utilities Comm'n*, 29 Cal. 3d 603, 614 (1981), the California Supreme Court held that administrative convenience may be given weight and "equal protection is not denied" merely because "classifications made are imperfect," or "not made with mathematical nicety or because in practice it results in some inequality." This case thus presents no departure from established precedent.[3]

In view of these precedents, the vote allocation scheme at issue here is not irrational. It was reasonable for the California legislature to use the best allocation of votes that was available and administratively feasible at the time it passed the special assessment statute. The statute provides for allocation of votes in accordance with the assessed value of the real property. At the time of its passage, this offered the only feasible method for allocating votes because the tax rolls were readily available, and it would take many months after the districts were created to determine, on a building by building basis, the square footage upon which the assessments would be

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[3] The California Supreme Court properly acknowledged that the SCRTD's subsequent proposal to amend the statute to change the manner in which the votes were allocated, had no relation to the intent of the Legislature at the time of the statute's passage. The California Supreme Court had to determine whether the statute as passed, and only that statute, meets constitutional requirements. Subsequent efforts of the SCRTD, or any other body, to amend the legislation, and the reasons or speculation about why such changes were or were not adopted, had no bearing on the court's inquiry.

based. As the California Supreme Court noted: "It was hardly unreasonable. . . . " Petitioners' Appendix at 37.

CONCLUSION

This case involves a unique state statute created for a local transportation district. It meets none of the criteria set out in Rule 10 and thus the petition should be denied.

Dated: June 3, 1992

Respectfully submitted,

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In The

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SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, HELEN M. BOLEN,

Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

BRIEF OF AMICUS CURIAE LOS ANGELES COUNTY TRANSPORTATION COMMISSION IN SUPPORT OF RESPONDENTS

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INTRODUCTION AND SUMMARY

Public transit stations have been shown to enhance the value of nearby property. [App. 7, 89-90.[1]] Levying benefit assessments on property specially benefitted by public projects is a common, and constitutional, method of recouping some of the cost of such projects from property owners who receive special benefits from them. Petitioners own property near transit stations which will be benefitted by proximity to those stations. [App. 9.] They have asserted constitutional arguments in an attempt to avoid paying their fair share.

Amicus curiae Los Angeles County Transportation Commission ["LACTC"] is the public agency principally in charge of planning, construction, and financing of all public rail transit lines in the County of Los Angeles. The assessments involved in this matter will help defray the costs of constructing transit stations, and, if those assessments are not levied, LACTC will have to provide the funds for them by diverting money from other parts of the transit system.

Petitioners make basically two arguments, and they are inconsistent:

1. That a California special benefit assessment statute is unconstitutional because it does not directly equate voting strength and liability for special benefit assessments; and

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[1] References throughout this Brief are to page numbers of the Petition for Certiorari in opposition to which it is filed [Pet.], the Appendix attached to that Petition [App.], and to the Joint Appendix filed in the state appellate courts [JA].

2. That the same statute cannot constitutionally omit tenants from participation in voting on formation of special benefit assessment districts.

Granting of the petition for certiorari is not appropriate in this case for the following reasons.

• Petitioners complain that the allocation of votes on a proposal to form an assessment district differs from the allocation of liability for special benefit assessments. They omit to mention, however, that they never satisfied, or attempted to satisfy, the requirements for holding such an election. The California statute involved provides for voting on a proposal to form an assessment district if owners of 25 percent of the assessed value of property in the proposed district petition for such an election. [California Public Utilities Code § 33002.2.] No such petition was filed, and the trial court found that petitioners did not make even ordinary efforts to comply with the statutory requirement. [App. 94; JA 215, 220, 840.] Because no such petition was filed, no vote on the proposed benefit assessment districts was ever held. Therefore, petitioners' complaint is theoretical.

• There is no constitutional requirement that voting strength in an assessment district election must be determined on the same basis as the assessments are imposed.

• Petitioners have misstated the purpose of the assessments involved here. Petitioners describe the use of assessment proceeds in terms which make it appear that those proceeds would be used to finance an entire transit

system. [Pet. 8, 24.] This overstatement is designed to create the impression that the benefit assessment districts have a broader purpose than they actually have, and thus to support petitioners' argument that the districts have general governmental powers so that strict scrutiny should be applied. In fact, it is provided by statute that the proceeds of district assessments can only be used for stations located within the district itself. [California Public Utilities Code § 33002(d).]

• Petitioners make light of the issue of administrative convenience as justification for apportioning voting strength in an election on forming an assessment district. Property tax assessments are readily available and can be consulted to make a list of eligible voters in a proposed assessment district. In order to determine the square footage of buildings throughout an assessment district, it is necessary to canvass the entire district – a time consuming and expensive task. It is one thing to carry out that task after an assessment district has been formed. It is quite another to impose the requirement of determining square footage at the early stages of the formation of a proposed district when its boundaries can be adjusted and when it is necessary to complete the formation process rapidly to meet schedules of public meetings, review by local authorities, and completion of the district formation process before information has become stale.

• Petitioners assert that tenants would have assessments passed on to them and that tenants therefore have to be included in the voting on an assessment district. In so arguing, however, petitioners ignore the fact that compiling a voting roll on the basis of the interests of tenants

in assessments would be a virtually impossible administrative task. Locating all tenants would be difficult enough. Examining their leases for pass through provisions would be impossible, and voting rights should not be determined by the provisions of private contracts.

- Blanket inclusion of all tenants as voters would contradict the very proportionality argument on which petitioners primarily base their case. There is no way to determine from public records which tenants would bear the burdens of the district assessments or in what proportions.

- The principal claim raised here, that each voter's proportional voting strength should equal that voter's proportional liability for special assessments, is not of widespread interest. The opinion of the California Supreme Court in this matter is the first appellate decision to discuss that issue at any length and to rule directly on whether such proportionality is constitutionally required. The issue arises here only because of the unusual circumstances of the present case which involves assessment districts of such extremely limited powers that voting strength could theoretically be made proportional to the effect on the voter of the issue being voted on. Such proportionality is impossible in most elections of broader scope. This case is rendered even more unique because it involves the effect of California's Proposition 13, which of course has no application in other states. The fact that such proportionality might be imposed in the unusual situation here is no reason for this court to make it a universal principle of constitutional law. There is no reason for this court to take up the

issue, which is raised only hypothetically in the present case.

1. INTEREST OF AMICUS CURIAE.

The action below was brought to determine the validity of special benefit assessments to finance part of the costs of stations for the "Red Line," a public transit project in Los Angeles, California.[2] California Public Utilities Code §§ 33000 through 33020 were passed by the California Legislature in 1983 to provide for establishment of special assessment districts in areas near proposed rapid transit stations in Los Angeles County. The assessment statutes provide that the Board of Directors of the Southern California Rapid Transit District ["SCRTD"] may establish special assessment districts in areas benefitted by proximity to rail transit stations, establish district assessments on real property within a district, and use the proceeds to build rapid transit stations in the district.

At the time the action was commenced, SCRTD was responsible for construction of the first segment of the Red Line, a subway which is referred to as MOS-1.[3] Subsequently, LACTC became the public agency principally responsible for construction and financing of the

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[2] What is now called the "Red Line" was at one time referred to as "Metro Rail". It is a rail transit line running underground from the Union Station in downtown Los Angeles to the San Fernando Valley, another part of the city.

[3] For purposes of construction, administration, and financing, the Red Line is divided into what are referred to as "Minimum Operable Segments," or "MOS."

Red Line and for the transit stations for which the assessments are to be levied.

LACTC has contracted to be primarily responsible for the design and construction of the second and third segments of the Red Line, known as "MOS-2" and "MOS-3." LACTC has been assigned uncompleted contracts relating to MOS-1. LACTC has become obligated under "full funding" agreements with the Federal Transit Administration, formerly the Urban Mass Transit Authority, to provide local funds to make up the difference between the costs of MOS-1, MOS-2, and MOS-3 and the funds received for those projects from federal and state sources. Pursuant to these agreements, LACTC will have to provide funds for transit stations from other sources if the assessments for financing of those stations are held invalid. LACTC would also be primarily responsible for any redesign or reduction in transit stations necessitated by loss of benefit assessment funds.

Amicus curiae LACTC is thus the public entity with the greatest interest in the special benefit assessments for transit stations which are the subject matter of this case.[4]

All parties named in the petition have consented to the filing of an amicus curiae brief by the Los Angeles County Transportation Commission.

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[4] Legislation has just been enacted in California to consolidate LACTC and SCRTD. As of April 1, 1993, the two agencies will cease to exist, and all of their functions and powers will be taken over by a new agency to be known as the "Los Angeles County Metropolitan Transportation Authority." See California Assembly Bill 152, signed by the Governor on May 20, 1992.

2. THE RATIONAL BASIS STANDARD APPLIES IN THIS CASE, NOT STRICT SCRUTINY.

If an election involves a public entity with general governmental powers, strict scrutiny applies, and deviation from the principle of one-person, one-vote is allowed only on the basis of compelling necessity. On the other hand, if an election involves only a special purpose district, the much less demanding reasonable basis standard is applied. Under the latter test, a statute is held to be constitutional if any state of facts reasonably may be conceived to justify limiting the voting to property owners. *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 732, 35 L.Ed.2d 659, 93 S.Ct. 1224 (1973).

The petition addresses the standard of constitutional review only in connection with the second issue raised, where it is argued that strict scrutiny should be applied to the argument about including tenants in the voting group. [Pet. 24.] Petitioners argue their first issue only in terms of the rational basis standard. [Pet. 20, 21.] Because of the very limited powers of the assessment districts involved here, the rational basis test applies to both issues. The California Supreme Court analyzed this issue in detail and correctly concluded that the rational basis standard applies, not strict scrutiny. [App. 12-30.]

Three United States Supreme Court cases have allowed voting in assessment district elections to be limited to property owners. *Salyer, supra*, 410 U.S. 719, *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743, 35 L.Ed.2d 675, 93 S.Ct. 1237 (1973) (per curiam), and *Ball v. James*, 451 U.S. 355, 68 L.Ed.2d

150, 101 S.Ct. 1811 (1981). These decisions hold that voting in district elections can be limited to property owners without violating the one-person, one-vote principle of the Equal Protection Clause, where an assessment district has a limited purpose, is financed by assessments on real property in the district, and has a disproportionate effect on property owners as opposed to other residents of the district.

Ball v. James involved a challenge to the constitutionality of an election of directors of the Salt River Project Agricultural Improvement and Power District, a large district which delivered water to half the State of Arizona. It also generated and sold electric power and had become one of the largest power suppliers in the State. Although property owners were subject to assessment for obligations of the district, most of the district's revenues were generated from the sale of electric power. Nevertheless, this huge district with its extensive operations was held to be sufficiently limited in its powers that the rational basis test was applicable to determine the constitutionality of voting for its directors. Limitation of voting in district elections to property owners was upheld by this court.

The special benefit assessment districts involved here have much more limited powers than the Salt River District which was the subject of *Ball*. The only function of the present districts is to raise money from assessments on property that benefits from proximity to a Metro transit station. The money raised from district assessments can only be used to finance stations in the district. The assessments are levied only on real property in the district. The assessments are not for transit purposes in

general but only for the very limited purpose of construction of stations in the special benefit districts. The assessment districts cover very limited areas. One of the districts includes properties in the vicinity of four downtown stations and is limited to properties within one-half mile of one or more of those stations. The other includes a single station and is limited to properties within one-third of a mile of that station. [App. 7-8.] Properties within these districts will benefit from proximity to stations, and the assessments are thus limited to properties which will benefit from having the stations built. [App. 9.]

Petitioners try to make it appear that the purpose of the assessments and therefore of the assessment districts is greater than it actually is. They state that the assessments are to finance transit "operations" and that they are "assessments to finance Metro Rail." [Pet. 8, 24.] Contrary to these statements, the assessments will not provide money for an entire transit system. The assessments can only be used to finance specific transit stations within the district in which the assessments are levied. California Public Utilities Code § 33002(d) provides:

> "The revenue from a special benefit assessment, which is imposed pursuant to this chapter, or from bonds secured by such a special benefit assessment, for the purpose of financing a rail transit station or rail transit related facility located within the benefit district, shall be used only for financing of the facility for which it is levied, and that revenue shall not be used for any other purpose or the payment of any other expense of the district, including, but not limited to, transit, transportation, or operating expense."

The voting provided for under the statute involved here is not an election of directors of the district but rather a referendum-type election on a single issue – whether a specific proposed assessment is to be levied. [California Public Utilities Code § 33002.6.] As held in *Town of Lockport v. Citizens for Community Action*, 430 U.S. 259, 51 L.Ed.2d 313, 97 S.Ct. 1047 (1977), deviation from one-person, one-vote is more likely to be upheld in a referendum-type election on a particular issue than in an election of officials. Therefore this is a stronger case for allowing a vote limited to property owners than most of the other special assessment district cases, including *Salyer* and *Ball*, which involved election of directors of districts who could pass upon more issues than the levy of an assessment.

Other state court decisions have approved departure from one-person, one-vote in circumstances analogous to those involved here. See, for example, *City of Humble v. Metropolitan Transit Authority*, 616 S.W.2d 484 (Tex.Civ. App. 1982) (in election to confirm the existence of a Metropolitan Transit Authority for Houston, Texas, and surrounding area, rational basis test applied and departure from one-person, one-vote allowed); and *Chesser v. Buchanan*, 193 Colo. 471, 568 P.2d 39 (1977) (statute limiting voting to property owners in election of commissioners of tunnel district for tunnel providing transportation between two sides of state held subject to reasonable basis test and constitutional).

The very limited powers of the special benefit assessment districts involved here require only a rational basis to be found constitutional. Strict scrutiny is not applicable.

3. THERE IS NO CONSTITUTIONAL REQUIREMENT THAT VOTING IN SPECIAL DISTRICT ELECTIONS BE PROPORTIONAL TO LIABILITY FOR DISTRICT ASSESSMENTS.

Petitioners' principal argument is that voting strength should be proportional to liability for special benefit district assessments. There is no such rule of constitutional law.

The only authority cited by petitioners in support of their argument of proportionality is a statement in *Ball v. James, supra,* 451 U.S. 355, 371, that Arizona could rationally make the weight of votes dependent upon the number of acres owned by the voters. This passage is not a holding that the weight of votes must depend upon the burden imposed or benefits received. It does not mean that such correlation is the only rational basis on which votes may be apportioned. Petitioners' argument is effectively rebutted in the opinion of the California Supreme Court. See App. 32-37.

As noted by the California Supreme Court, the first of this court's cases which validated limitation of voting to land owners in special purpose elections of districts with limited powers, *Salyer Land Co. v. Tulare Lake Basin Water Storage District, supra,* 410 U.S. 719, did not involve such proportionality of benefits and voting strength. In *Salyer,* votes were apportioned in accordance with tax assessment values of land in the district, but special assessments were levied in accordance with benefits received from each project; the two are not necessarily the same. As stated in *Salyer*: "votes in those elections are apportioned according to the assessed valuation of the

land." [410 U.S. at 725.] See also California Water Code §§ 41001 through 41019 which provide for this apportionment. However, the Water Storage District assessments were apportioned "in proportion to the benefits received." [410 U.S. at 729.] This court did note that assessments for the then most recent project undertaken by the district had been apportioned equally on all land throughout the district because the commissioners charged with making the special assessment had found that all land in the district benefitted equally from that project. [410 U.S. at 734.] This court's decision does not say how assessments for other district projects had been apportioned. The statute which provided for the voting scheme in *Salyer* certainly does not require that special assessments be imposed equally on all land in the district.

The Water Storage District which was the subject of *Salyer* was organized pursuant to provisions of the California Water Code. [410 U.S. at 723-724.] Apportionment of special assessments is provided for in California Water Code §§ 46175 through 46179. The statute contemplates multiple assessments imposed on a project by project basis. [California Water Code § 46175.] As to each such project, California Water Code § 46176 provides:

> "The commissioners shall apportion the cost in accordance with the benefits that will accrue to each tract of land held in separate ownership by reason of the expenditures of the money and the completion of the project, or such units of it as have been specified for immediate construction. The assessment shall be payable in lawful money of the United States."

This section was obviously drafted in contemplation of different projects benefitting different tracts in different proportions; if the legislature had intended only to allow assessment of land in proportion to assessed value, this provision would have been unnecessary. Thus votes for directors of the Water Storage District in the election involved in *Salyer* were apportioned on the basis of tax assessment values of property owned throughout the district, while the statute allowed for apportionment of special assessments on a different basis.

The election at issue in *Salyer* did not deal with the approval of a project or with assessment for a project. It was an election of directors of the water storage district. The statute providing for water storage districts was held to be constitutional in *Salyer* even though it allowed votes to be allocated on a different basis than special assessments.

Petitioners argue that "the method of assessment" was not an issue in *Salyer*. [Petition 15, n. 8.] This is true, but neither was proportionality an issue in *Ball*, on which petitioners base their case. The statute involved in *Ball* provided that voting was to be in proportion to acreage owned, which was the same basis as potential liability for assessments and for distribution of water. The issue in *Ball*, was whether the powers of the water district were so extensive that the one-person, one-vote rule applied or whether the Arizona legislature could constitutionally limit voting to land owners. In the course of its opinion the court said that "Arizona could rationally make the weight of [land owners'] votes dependent upon the number of acres they own, since that number reasonably reflects the relative risks they incurred as landowners and

the distribution of benefits and the burdens of the District's water operations." [451 U.S. at 371.] In other words, this court said that such proportionality was rational. This court did not state that such proportionality was the only rational way to allocate votes, or that such proportionality was constitutionally required.

The real point is that petitioners have not cited a single case which holds that there is any requirement that votes in special district elections must be weighted in the same proportion as burdens. Petitioners are attempting to have this court create a new principle of constitutional law.

Proportionality between votes and burdens is rarely a possibility. It certainly does not exist in elections where one-person, one-vote applies. Proportionality is only possible for votes involving special, limited purpose districts where voting is limited to a group of persons who are particularly affected by the operations of the districts. In many cases, even limited purpose districts cannot have proportionality between voting strength and burdens or benefits. For example, in an election of district directors as in *Salyer,* proportionality between allocation of votes and burdens created by these votes is only possible after the fact because directors do not establish the district's projects or impose assessments for projects until after they are elected.

Proportionality was possible in *Ball* because assessments, water allocation, and votes could all be based on acreage owned. [451 U.S. at 359-360, 371.]

The assessment districts involved here exist for only the very limited purpose of imposing assessments to raise

money for construction of transit stations in the district. They have no other powers. Because of this very limited function, it would be theoretically possible to have the same basis for strength in voting on formation of the district as for liability for the assessments which are to be levied. In most elections for more extensive purposes, it would be impossible to equate voting strength with the effect of the vote. In most cases, proportionality between voting strength and burdens imposed or benefits received is so obviously impossible that the argument that there should be such proportionality is not even raised.

It is the very limited, single issue vote involved here which suggested the possibility of proportionality between votes and assessments. This rare circumstance is not an appropriate basis for creating a new principle of constitutional law which could not possibly be applied to most elections of broader scope.

The California Supreme Court held here that there is substantial administrative convenience in basing votes on assessed values and that there is a rational basis for so doing. [App. 36.] That decision is correct.

4. VOTING ON FORMATION OF A SPECIAL ASSESSMENT DISTRICT MAY PROPERLY BE LIMITED TO PROPERTY OWNERS. TENANTS DO NOT HAVE TO BE INCLUDED.

Petitioners' second argument is that tenants as well as property owners should be entitled to vote on formation of the assessment districts. [Pet. 23.] Petitioners recognize that this argument could only be sustained if the

strict scrutiny standard were applied instead of the rational basis test on which they base their argument regarding proportionality. [Pet. 24.]

Petitioners argue that many tenants will bear the burden of special district assessments because of "pass through" clauses in their leases. [Pet. 24.] This same pass through argument was raised and expressly rejected in *Salyer*. [410 U.S. at 731-733.] Relying on *Salyer*, the California Supreme Court rejected petitioners' pass through argument here. [App. 31-32.]

Petitioners concede that limiting voting to interested parties is constitutionally permissible. They argue that tenants should be included in the group of voters, but they fail to suggest how it could be determined which tenants should vote or how their votes should be weighted. Should all tenants vote equally even if they would not pay any part of any assessment? If such a scheme were adopted, petitioners would no doubt protest that it was unconstitutional as being disproportionate. Should voting be made dependent upon the terms of individual leases? Even identifying tenants, who frequently come and go with little public record, would be extremely difficult. A requirement of checking the terms of individual leases would create an impossible administrative burden. See the California Supreme Court opinion at App. 32.

There is a rational basis for limiting voting on formation of assessment districts to property owners [see App. 31-32], and the challenged statute which so provides is constitutional.

5. NOTHING TO BE DECIDED IN *NORDLINGER V. HAHN* REQUIRES THE GRANTING OF THE PETITION IN THIS CASE.

The unspoken basis of the petition of Santa Fe and others is the hope that, if this court holds California's Proposition 13 property tax system to be invalid in the pending case of *Nordlinger v. Hahn*, No. 90-1912, it might also hold invalid a California statute basing voting strength on assessed value of property in an election on establishment of a special benefit assessment district.

Regardless of how this court may decide *Nordlinger*, the petition here should be denied.

If petitioners' reference to *Nordlinger* has any relevance at all, it is only with respect to the first of the two issues raised in the petition, the argument of lack of proportionality between the basis of allotting votes in an election on formation of a special benefit assessment district and the basis on which the assessments are determined.

Petitioners have not included in the issues presented to this court a challenge to the statutory prerequisites for holding the election about which they complain. They have not raised here, as they did in the trial court and the California Court of Appeal, an argument about the constitutionality of the requirement that a petition signed by owners of 25 percent of the assessed value of property in the proposed assessment district must be filed in order to have a vote on formation of the district.[5] Therefore,

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[5] In rejecting this argument, the trial court found that petitioners had not made even ordinary efforts to comply with the statutory requirement. [App. 94.]

petitioners' only argument regarding the Proposition 13 system of basing assessed value on purchase price rather than on current appraisals and paper profits is that it increases the disparity between allocation of votes and allocation of special benefit assessments. That increased disparity, however, does not entitle petitioners to relief in this court.

There never was any vote on formation of the assessment districts because no petition requesting one was ever filed. Proportionality is irrelevant when no election was ever held, and voting strength never came into play.

There is no constitutional requirement of proportionality between voting strength in an election on formation of an assessment district and liability for the assessments when they are levied.

The administrative convenience (practically an administrative imperative in this case) of having a readily available list of property owners and values bearing a rough correspondence to amount of property owned justifies allocating votes in accordance with assessed values. As held by the California Supreme Court, that same principle applies despite the effects of Proposition 13. [App. 34, n. 8.]

The issues raised by petitioners do not justify the granting of this petition for certiorari regardless of the outcome of *Nordlinger*. The argument that proportionality between voting strength and special assessments is required by the Constitution had not been directly ruled upon in any reported case until the decision of the California Supreme Court in this matter. There is no conflict in decisions on the point. The fact that it has not been the

subject of appellate decisions shows that it is not an issue of great moment which requires the attention of this court. This is an unusual issue which can only arise in the case of a limited purpose district with operations which have similar effects on all property owners in the district. Even if this court were disposed to consider the issue, it should only do so in a case where there actually is an election and in which disparity of voting power and special assessments actually occurs, not where there is merely a hypothetical disparity as in the present case.

CONCLUSION

The issues raised by the petition are obscure and arise only because of the unusual facts of this case. The principle of proportionality between voting strength and burdens of the results of the vote which petitioners call upon this court to establish is novel and would be unsound if imposed. The issues raised do not warrant the attention of this court. The decision of the California Supreme Court is correct.

The petition for writ of certiorari should be denied.

Respectfully submitted,

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No. 91-1741

In The

Supreme Court of the United States

October Term, 1991

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al.,

Petitioners,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, HELEN M. BOLEN,

Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

PETITIONERS' REPLY MEMORANDUM

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Respondents.

Petition For Writ Of Certiorari To The California Supreme Court

PETITIONERS' REPLY MEMORANDUM

This Petition squarely presents the discrete issue of whether the number of votes allocated in a special purpose election creating a benefit assessment district must bear any relation to the burden of the assessment in order to satisfy the Fourteenth Amendment's Equal Protection Clause.

Hoping that the less said the better, Respondent Southern California Rapid Transit District ("RTD") makes no effort to explain or justify the random and arbitrary vote allocation scheme of California Public Utilities Code §§ 33000, *et seq.*, based on assessed (*i.e.*, acquisition) value, other than to reiterate its greater "convenience" over the logical and rational method of using the same

basis as the levy (square footage) to allocate the votes. Yet a Constitutional analysis requires a more detailed, almost surgical application of the law. Thus, far, the RTD has succeeded with a blunderbuss, not a scalpel. What is to RTD an "opportunistic attack on an important public measure," is a $200 million dollar bill to the property owners of downtown Los Angeles, often doubling or tripling owners' existing property taxes. What is to RTD a "narrow" issue, is an issue of extreme importance to hundreds of property owners along the subway line yet to be assessed and, indeed, property owners throughout the state who may subject to this increasingly common "benefit assessment" taxation. Whether an utterly sham election format in this huge assessment district is "good enough for government work" merits this Court's attention.

RTD's opposition raises two new arguments that deserve comment:

I. RTD ARGUES FOR THE FIRST TIME IN THIS COURT THAT THE CASE RAISES NO ISSUES OF GENERAL SIGNIFICANCE. RTD'S OWN STATEMENTS BELIE ITS ELEVENTH HOUR ATTEMPT TO DIMINISH THE IMPORTANCE OF THIS CASE.

This Court recognized the importance of the equal protection question in special purpose elections by reviewing the litany of cases cited in the Petition beginning in 1969 with *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583, and continuing to 1989 with *Quinn v. Millsap*, 491 U.S. 95, 109 S. Ct. 2324, 105 L. Ed. 2d 74. Nor is it, as RTD asserts, mere "coincidence" that this Court agreed to hear and decide a rationality challenge on equal protection grounds to

Proposition 13 in *Nordlinger v. Hahn*, No. 90-1912. No matter how that case is decided, this case presents the distinct question of whether the deference inherent in the taxation area, inheres as well when a voting scheme is challenged.

To fully appreciate the significance of this challenge to a statutory violation of equal protection in the voting rights area, one need look no further than RTD's own appeals to the California Supreme Court to exercise its discretionary review. In its Petition for Review below, RTD wrote:

> "The decision also imperils the very existence of a time tested assessment device frequently employed in California and elsewhere to finance public improvements and recapture the windfall benefits flowing from those improvements. . . . This Petition presents significant issues of law and public policy." (Petition for Review at 3.)
>
> "The Court of Appeal's decision in this case, if allowed to stand, has profound implications for special purpose elections of all kinds." (Petition for Review at 6.)
>
> "Granting review in this case is necessary and appropriate because the Court of Appeal's decision creates a conflict among the courts on a constitutional issue implicating special purpose elections and an important social tool for public improvements: the benefit assessment." (Petition for Review at 24.)

In its brief on the merits in the California Supreme Court, RTD wrote:

> "In an era of increasing competition for the dwindling public monies available to fund public improvements and betterment projects of all sorts, this case presents unique public policy considerations and has potentially sweeping

practical implications." (RTD's Opening Brief at 2.)

RTD's new argument is that this is a case of little moment. Certainly to the property owners who must foot the $200 million bill under an unfair election scheme, it is a case of extreme significance. As to the implications beyond this case, RTD's own words speak for themselves. The significance of this case was not lost on the California Supreme Court in granting review, and certiorari is appropriate here.

II. PETITIONERS HAVE PERFECTED THEIR CHALLENGE TO THE ELECTORAL PROCEDURES.

Without citing a single case or other authority, RTD raises the new argument that Petitioners' claims are "academic" and have somehow not been perfected for review because they did not file the petition with the required signatures to secure a vote under California Public Utilities Code § 33002.2.[1] It is unclear whether this is a ripeness argument, exhaustion of remedies claim, or some other unnamed defense. What is clear is that RTD's position has no merit whatsoever. RTD made this argument in both the California Court of Appeal and the California Supreme Court. In deciding the case on the merits, neither court even mentioned the issue.

Petitioners are obviously interested parties by virtue of their obligation to pay the assessments. Beyond that threshold standing requirement, there are no prerequisites to making a facial challenge to the validity of a

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[1] In its amicus curiae brief, the Los Angeles County Transportation Commission makes the same argument, referring to the Petitioners' challenge as "hypothetical."

statute. Where a statute such as Public Utilities Code §§ 33000, *et seq.*, is unconstitutional on its face, a plaintiff is not barred from seeking judicial relief without exhausting administrative remedies [*Ebel v. City of Garden Grove*, 120 Cal. App. 3d 399, 409 (1981)], or on ripeness grounds. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386, 47 S. Ct. 114, 71 L. Ed. 303, 310 (1926); *Agins v. City of Tiburon*, 447 U.S. 255, 100 S. Ct. 2138, 65 L. Ed. 2d 106 (1980); *Martino v. Santa Clara Valley Water Dist.*, 703 F.2d 1141, 1146-47 (9th Cir. 1983).

The petition process suffered from the same constitutional infirmities as the vote allocation scheme: to qualify for an election, the statute required a petition of at least 25 percent of the assessed value (*i.e.*, acquisition value) of real property within the district while the basis of the tax was square footage. Pub. Util. Code §§ 33002, 33002.2. Petitioners are not required to exhaust an unconstitutional remedy in order to challenge it.

There simply is no justification to support the allocation of votes in this poorly conceived statutory scheme. The opinion of the Supreme Court of California stands as an example of the worst kind of rationalization of an unfair burden on constitutional voting rights. It should not be permitted to stand as an example of what government can do, to wit, whatever it wants.

Respectfully submitted,

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